

**FIFTY-SECOND DAY**  
(Thursday, April 25, 1991)

The Senate met at 10:30 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Absent-excused: Lyon.

A quorum was announced present.

The Reverend Robert W. Kettrick, First Christian Church, Jacksonville, offered the invocation as follows:

Almighty God, You come to us even as we seek to find You. We pray today for this world of which we are part, for this great State of ours and its wonderful people. Accept our prayers for our State and its leaders, that we might serve Thee faithfully in the common affairs of life.

Grant to each of us in this great State, a sense of worth and dignity in ourselves—because we are made in Your image.

Bless our State, guide our legislators and the courts to be responsive to Your will and sensitive to all human need. Give to us a willingness to do the right thing and support justice tempered with mercy. Use these Senators today as instruments of Your peace and agents of Your love, we pray in God's name. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

**LEAVE OF ABSENCE**

Senator Lyon was granted leave of absence for today on account of important business on motion of Senator Brooks.

**CO-AUTHOR OF SENATE BILL 200**

On motion of Senator Brown and by unanimous consent, Senator Lucio will be shown as Co-author of S.B. 200.

**CO-AUTHOR OF SENATE BILL 565**

On motion of Senator Parker and by unanimous consent, Senator Truan will be shown as Co-author of S.B. 565.

**CO-AUTHORS OF SENATE BILL 1392**

On motion of Senator Zaffirini and by unanimous consent, Senators Armbrister, Barrientos, Lucio and Tejeda will be shown as Co-authors of S.B. 1392.

**CO-AUTHORS OF SENATE BILL 1425**

On motion of Senator Zaffirini and by unanimous consent, Senators Armbrister, Barrientos, Lucio and Tejeda will be shown as Co-authors of S.B. 1425.

**CO-AUTHORS OF SENATE JOINT RESOLUTION 39**

On motion of Senator Zaffirini and by unanimous consent, Senators Armbrister, Barrientos, Lucio and Tejeda will be shown as Co-authors of S.J.R. 39.

**CO-SPONSORS OF HOUSE BILL 922**

On motion of Senator Harris of Tarrant and by unanimous consent, Senators Moncrief and Montford will be shown as Co-sponsors of H.B. 922.

**REPORTS OF STANDING COMMITTEES**

Senator Montford submitted the following report for the Committee on Finance:

S.B. 713  
S.B. 975  
S.B. 1041  
S.B. 1042  
S.B. 1392  
S.B. 1425  
S.J.R. 15  
C.S.S.J.R. 39  
C.S.S.B. 714  
C.S.S.B. 698  
C.S.S.B. 670  
C.S.S.B. 1004  
C.S.S.B. 514  
C.S.S.B. 335  
C.S.S.B. 772  
C.S.S.B. 325

Senator Brown, Vice Chair, submitted the following report for the Committee on Criminal Justice:

S.B. 200  
S.B. 1314  
H.B. 597  
S.B. 853  
S.B. 355  
C.S.S.B. 1407  
C.S.S.B. 1368  
C.S.S.B. 174

Senator Sims submitted the following report for the Committee on Natural Resources:

S.B. 1196  
C.S.S.B. 981  
C.S.S.B. 1140  
C.S.S.B. 1057  
C.S.S.B. 1059  
C.S.S.B. 1409  
C.S.S.B. 1047  
C.S.S.B. 742  
C.S.S.B. 1306

**C.S.S.B. 980**  
**C.S.H.B. 1181**  
**C.S.H.B. 393**

Senator Green submitted the following report for the Committee on Jurisprudence:

**H.B. 1050 (Amended)**  
**C.S.S.B. 877**  
**C.S.S.B. 941**  
**C.S.S.B. 958**  
**C.S.S.B. 1451**

Senator Dickson submitted the following report for the Committee on Economic Development:

**H.B. 448**  
**H.B. 384**  
**S.B. 339**  
**C.S.S.B. 1184**  
**C.S.S.B. 1070**  
**C.S.S.B. 773**  
**C.S.S.B. 801**  
**C.S.S.B. 447**  
**C.S.S.B. 1005**  
**C.S.S.B. 1177**  
**C.S.S.B. 1456**  
**C.S.S.B. 1226**  
**C.S.S.B. 1261**

Senator Parker submitted the following report for the Committee on Education:

**S.B. 660**  
**S.B. 669**  
**S.B. 1286 (Amended)**  
**C.S.S.C.R. 68**  
**C.S.S.B. 692**  
**C.S.S.B. 757**

**BILL SIGNED**

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bill:

**H.B. 936**

**MESSAGE FROM THE GOVERNOR**

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas  
April 25, 1991

**TO THE SENATE OF THE SEVENTY-SECOND LEGISLATURE,  
REGULAR SESSION:**

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

**TO BE MEMBERS OF THE TEXAS AGRICULTURAL DIVERSIFICATION  
BOARD, for terms to expire January 1, 1993:**

**POLLY CUMMINGS**

HCR/61, Box 03

Izoro, Texas 76522

Ms. Cummings will be replacing Walter Harpool of Denton, whose term expired.

**MAURICE OWENS**

Rt. 1, Box 351

Hempstead, Texas 77445

Mr. Owens will be replacing Jay Anderson of East Bernard, whose term expired.

**LUIS MATA**

11731 Trey Burton

El Paso, Texas 79936

Mr. Mata will be replacing George B. Mathers, Jr., of Canadian, whose term expired.

**JOE BAILEY PATE, JR.**

6608 Norfolk

Lubbock, Texas 79413

Mr. Pate will be replacing Mary Lou Grier of Boerne, whose term expired.

**TO BE A MEMBER OF THE TEXAS BOARD OF LICENSURE FOR NURSING HOME ADMINISTRATORS, for a term to expire January 31, 1997:**

**JARMESE L. MORRIS**

2451 Covington Way

Pearland, Texas 77584

Ms. Morris is being reappointed.

**TO BE A MEMBER OF THE TEXAS HOUSING AGENCY BOARD OF DIRECTORS, for a term to expire January 31, 1993:**

**DONALD W. SOWELL**

204 Alonzo Street

Prairie View, Texas 77446-0187

Mr. Sowell will be filling the unexpired term of Ken DeJarnett of Dallas, who resigned.

Respectfully submitted,

/s/Ann W. Richards  
Governor of Texas

**SENATE RESOLUTION 581**

Senator Haley offered the following resolution:

**S.R. 581**, Declaring April 25, 1991, "Jacksonville Day" at the State Capitol.

The resolution was read and was adopted by a viva voce vote.

**GUESTS PRESENTED**

Upon recognition, Senator Haley introduced citizens from Cherokee County who are here in celebration of "Jacksonville Day."

The Senate welcomed these guests.

**SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

The President announced the time had arrived to consider the Executive appointments to agencies, boards and commissions. Notice of submission of these names for consideration was given yesterday by Senator Barrientos.

Senator Barrientos moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

#### **NOMINEES CONFIRMED**

The following nominees as reported by the Committee on Nominations were confirmed by the following vote: Yeas 29, Nays 1.

Nays: Krier.

Absent-excused: Lyon.

Member, Texas Motor Vehicle Commission: T. J. CONNOLLY, Bexar County.

Members, Board of Regents, Texas State University System: WILLIAM L. CUNNINGHAM, Hays County; MS. BECKY R. ESPINO, Pecos County; MS. JANE MONDAY, Walker County.

Member, Water Development Board: WILLIAM B. MADDEN, Dallas County.

Members, Governing Board of the Texas School for the Deaf: MS. TRENA LENELL BAXLEY, Polk County; MRS. BEATRICE M. BURKE, Howard County; MS. GAYLE HEDGE LINDSEY, Travis County; MS. NANCY ELLEN MUNGER, Hays County; RALPH H. WHITE, Travis County.

#### **SENATE RESOLUTION 599**

Senator Sibley offered the following resolution:

**S.R. 599**, Declaring April 25, 1991, as "Ellis County Day" at the Capitol.

The resolution was read and was adopted by a viva voce vote.

#### **GUESTS PRESENTED**

Upon recognition, Senator Sibley introduced a delegation of citizens of Ellis County seated in the gallery.

The Senate welcomed these guests.

**(Senator Sibley in Chair)**

#### **SENATE RESOLUTION 592**

Senator Barrientos offered the following resolution:

WHEREAS, It is a distinct honor and a great pleasure for the Senate of the State of Texas to congratulate Representative Paul C. Moreno on the august occasion of his 60th birthday on April 28, 1991; and

WHEREAS, The people of Texas and the citizens of District 72 in El Paso County are truly fortunate to have such a knowledgeable and dedicated public servant as their spokesman; and

WHEREAS, The Hispanic member with the longest tenure, Representative Moreno has been in the Texas House of Representatives since 1969 and continues to impress his constituency with his devotion to their needs and interests; and

WHEREAS, His 24 years of service have been marked by his strong advocacy for the rights of the people who historically have been underrepresented; and

WHEREAS, Representative Moreno coauthored the first Texas statute dealing with architectural barriers and the "white cane" law, helping eliminate restrictions on the mobility of visually handicapped persons; and

WHEREAS, Already the recipient of numerous honors and awards, Representative Moreno is recognized as an outstanding legislator who has been an active lobbyist for the disabled, the blind, and the poor; and

WHEREAS, The most significant award he has received is the PUSH-EXCEL National Award which recognizes excellence and achievement against all odds; and

WHEREAS, Presently serving on the Labor and Employment Committee and as Vice-Chair of the Urban Affairs Committee, he works diligently to promote the public good; and

WHEREAS, Born in Alamogordo, New Mexico, on April 28, 1931, Paul has spent his life in El Paso, where he received his bachelor of business administration degree from Texas Western College; and

WHEREAS, Since his youth, Paul has been interested in helping the community; he helped organize the first Catholic Youth Organization in El Paso when he was 14 and later became president of the Catholic Youth Organization affiliated clubs and the Tepeyoc Youth Club; and

WHEREAS, A graduate of The University of Texas School of Law, he is a member of the State Bar of Texas, the Texas Trial Lawyers Association, and the American Judicature Society; and

WHEREAS, This energetic and highly respected leader is founder of both the El Paso Legal Assistance Society and the El Paso Mexican American Bar Association and organized the Spanish Speaking Section of the Texas Bar; and

WHEREAS, Representative Moreno has worked diligently in the fields of law and education to bring about improved conditions in the areas of education, civil rights, and labor; and

WHEREAS, A six-year veteran of the United States Marine Corps, Representative Moreno served his country in Korea and was awarded several medals in recognition of his exceptional valor, including the United States Presidential Unit Citation with two bronze stars and the Korean Presidential Unit Citation with one Oak Leaf Cluster; and

WHEREAS, A member of the Disabled American Veterans and the Paralyzed Veterans of America, he was named the Outstanding Texas Disabled Veteran in 1966 and was a member of the Governor's Committee for the Study of Handicapped Texans; and

WHEREAS, It is indeed fitting and appropriate that the Texas Senate pause in its deliberations to honor this outstanding public servant; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 72nd Legislature, hereby extend sincere birthday greetings to Representative Paul Moreno on this most felicitous occasion; and, be it further

RESOLVED, That a copy of this Resolution be prepared for him as an expression of high regard from the Texas Senate.

BARRIENTOS  
TRUAN  
LUCIO  
TEJEDA  
ROSSON  
ZAFFIRINI

The resolution was read.

On motion of Senator Brooks and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Truan, the resolution was adopted by a viva voce vote.

#### **GUESTS PRESENTED**

Upon recognition, Senator Barrientos introduced Representative Paul Moreno escorted by Representative Cavazos and Members of the Mexican-American House Delegation.

The Senate extended a warm welcome to the guests.

The President presented to Representative Moreno an enrolled copy of the resolution.

**(President in Chair)**

#### **MESSAGE FROM THE HOUSE**

House Chamber  
April 25, 1991

HONORABLE BOB BULLOCK  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**S.C.R. 98**, In memory of Jack Lawrence Butler.

**H.C.R. 186**, Honoring Fort Hood and all of its personnel for their important role in Operation Desert Shield and Operation Desert Storm.

**H.C.R. 193**, Welcoming Her Majesty Queen Elizabeth II to the State of Texas on the occasion of her visit to the United States.

Respectfully submitted,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### **CAPITOL PHYSICIAN**

Senator Turner was recognized and presented Dr. H. D. Pope of Bryan as the "Doctor for the Day."

The Senate welcomed Dr. Pope and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 79 ON SECOND READING**

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**C.S.H.B. 79**, Relating to the exemption of certain activities from the licensing and registration requirements under Chapter 97, Acts of the 70th Legislature, Regular Session, 1987 (Article 4477-3a, Vernon's Texas Civil Statutes).

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 79 ON THIRD READING**

Senator Leedom moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 79 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1.

Nays: Barrientos.

Absent-excused: Lyon.

**HOUSE BILL 553 ON SECOND READING**

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 553**, Relating to the payment of costs incurred by a sheriff or constable for the storage, security, or management of certain property.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 553 ON THIRD READING**

Senator Leedom moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 553 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**HOUSE BILL 885 ON SECOND READING**

On motion of Senator Johnson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 885**, Relating to the qualifications of grand jury commissioners.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 885 ON THIRD READING**

Senator Johnson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 885 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.



**HOUSE BILL 1266 ON SECOND READING**

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 1266**, Relating to the terms of and election procedures relating to the board of directors of the Val Verde County Hospital District.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 1266 ON THIRD READING**

Senator Sims moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1266** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**HOUSE BILL 861 ON SECOND READING**

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 861**, Relating to the payment of costs associated with the appearance of a licensed health care professional for the state at criminal proceedings arising from a sexual assault.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 861 ON THIRD READING**

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 861** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE CONCURRENT RESOLUTION 29  
ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

**C.S.S.C.R. 29**, Requesting that the Texas Education Agency have a designated staff person who is a social worker to assist with case management oriented dropout programs.

The resolution was read second time and was adopted by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 726 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 726**, Relating to regulation of fish farmers under the Parks and Wildlife Code; creating an offense and providing penalties.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 726 ON THIRD READING**

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 726** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 985 ON SECOND READING**

On motion of Senator Harris of Dallas and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 985**, Relating to retail installment contracts or retail charge agreements and providing for credit unemployment insurance.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 985 ON THIRD READING**

Senator Harris of Dallas moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 985** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.

**SENATE BILL 1469 ON SECOND READING**

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1469**, Relating to the creation of the County Court at Law of Erath County.

The bill was read second time and was passed to engrossment by a viva voce vote.

**SENATE BILL 1469 ON THIRD READING**

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that S.B. 1469 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.

**SENATE BILL 1491 ON SECOND READING**

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1491, Relating to the jurisdiction of the Wise County Court at Law.

The bill was read second time and was passed to engrossment by a viva voce vote.

**SENATE BILL 1491 ON THIRD READING**

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that S.B. 1491 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.

**GUESTS PRESENTED**

Senator Dickson was recognized and introduced seniors from Lampasas High School seated in the gallery.

The Senate welcomed these guests.

**COMMITTEE SUBSTITUTE****SENATE BILL 691 ON SECOND READING**

On motion of Senator Dickson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 691, Relating to insurance coverage required to be provided by motor carriers for employees so as to enable motor carriers to provide accidental disability, medical and death coverages as alternatives to workers compensation insurance.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE****SENATE BILL 691 ON THIRD READING**

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.S.B. 691 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 557 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 557**, Relating to indemnification by the state in certain civil actions.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 557 ON THIRD READING**

Senator Montford moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 557** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.

**SENATE BILL 190 ON SECOND READING**

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 190**, Relating to deductions from the salaries of school district employees for dues to professional organizations.

The bill was read second time and was passed to engrossment by a viva voce vote.

**SENATE BILL 190 ON THIRD READING**

Senator Whitmire moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.B. 190** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Armbrister, Barrientos, Brooks, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Henderson, Johnson, Krier, Lucio, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Bivins, Brown, Harris of Tarrant, Harris of Dallas, Leedom, Sims.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.

**RECORD OF VOTES**

Senators Bivins, Brown, Harris of Dallas, Harris of Tarrant, Leedom, Montford, Sims and Ratliff asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1094 ON THIRD READING**

Senator Lucio moved that the regular order of business be suspended and that C.S.S.B. 1094 be placed on its third reading and final passage.

C.S.S.B. 1094, Relating to the creation, administration, powers, duties, and operation of the Coastal Conservation Commission and of coastal conservation districts and to the financing of districts; granting the authority to issue bonds; authorizing taxes.

The motion prevailed by the following vote: Yeas 20, Nays 10.

Yeas: Armbrister, Bivins, Brooks, Brown, Green, Haley, Harris of Dallas, Henderson, Krier, Leedom, Lucio, Montford, Parker, Ratliff, Sibley, Sims, Tejada, Turner, Whitmire, Zaffirini.

Nays: Barrientos, Carriker, Dickson, Ellis, Glasgow, Harris of Tarrant, Johnson, Moncrief, Rosson, Truan.

Absent-excused: Lyon.

The bill was read third time.

Senator Brooks offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend C.S.S.B. 1094 in Section 103.054 (Committee Printing page 9, line 6), by inserting the following after "this Act":

A district may not erect or maintain a groin, seawall, barrier, pass, channel, jetty, or other structure under Section 61.022, Natural Resources Code, to the extent that the erection or maintenance adversely affects the public's individual or collective right of free and unrestricted ingress and egress to and from the public beaches as provided by Subchapter B, Chapter 61, Natural Resources Code.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend C.S.S.B. 1094 in Section 1, Title 5, Section 103.003 by striking subsection (e) in its entirety and substitute in lieu thereof the following:

"(e) A district shall not include a tract of land unless the owner or owners thereof have consented thereto in writing. A district shall not have the authority to levy taxes on the mineral estate owner or owners or the owner or owners of any mineral leasehold estate therein."

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator Lucio and by unanimous consent, the caption was again amended to conform to the body of the bill as amended.

The bill as amended was finally passed by the following vote: Yeas 19, Nays 11.

Yeas: Armbrister, Bivins, Brooks, Brown, Haley, Harris of Dallas, Henderson, Krier, Leedom, Lucio, Montford, Parker, Ratliff, Sibley, Sims, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Barrientos, Carriker, Dickson, Ellis, Glasgow, Green, Harris of Tarrant, Johnson, Moncrief, Rosson, Truan.

Absent-excused: Lyon.

#### SENATE BILL 1266 ON SECOND READING

Senator Ratliff asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**S.B. 1266**, Relating to the creation of the East Texas Natural Resources Preservation District, and the regulation of oil and gas production from the East Texas Field under Chapter 85 of the Texas Natural Resources Code.

There was objection.

Senator Ratliff then moved to suspend the regular order of business and take up **S.B. 1266** for consideration at this time.

The motion prevailed by the following vote: Yeas 18, Nays 8, Present-not voting 1.

Yeas: Armbrister, Barrientos, Carriker, Dickson, Ellis, Haley, Harris of Tarrant, Johnson, Krier, Lucio, Ratliff, Rosson, Sibley, Sims, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Bivins, Brooks, Brown, Green, Harris of Dallas, Henderson, Leedom, Truan.

Present-not voting: Moncrief.

Absent: Glasgow, Montford, Parker.

Absent-excused: Lyon.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Amend **S.B. 1266** by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter C, Chapter 85, Natural Resources Code, is amended by adding Section 85.065 to read as follows:

**Sec. 85.065. EAST TEXAS NATURAL RESOURCES PRESERVATION DISTRICT.** (a) The East Texas Natural Resources Preservation District, a region with mineral resources of unique proportions and importance to this state, is established.

(b) The East Texas Natural Resources Preservation District consists of the oil and gas reservoir designated on January 1, 1991, by the commission as the East Texas Field.

(c) In addition to the authority granted the commission by other provisions of this chapter, the commission may regulate the production of oil and gas from the East Texas Natural Resources Preservation District in a manner the commission determines appropriate to:

(1) conserve and protect the natural resources of the district;

(2) protect and balance correlative rights of mineral interest owners in the district; and

(3) account for the exceptional and unique nature of the district.  
(d) The commission may implement this section by either rule-making or contested case procedures under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 2. Section 85.065, Natural Resources Code, as added by this Act, does not affect any regulation by the Railroad Commission of Texas of the East Texas Field, as designated by the commission, before the effective date of this Act.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Ratliff and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

#### **MOTION TO PLACE SENATE BILL 1266 ON THIRD READING**

Senator Ratliff moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that S.B. 1266 be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 18, Nays 7, Present-not voting 2. (Not receiving four-fifths vote of Members present)

Yeas: Armbrister, Barrientos, Brooks, Carriker, Dickson, Haley, Harris of Tarrant, Johnson, Krier, Lucio, Ratliff, Rosson, Sibley, Sims, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Bivins, Brown, Harris of Dallas, Henderson, Leedom, Parker, Truan.

Present-not voting: Moncrief, Montford.

Absent: Ellis, Glasgow, Green.

Absent-excused: Lyon.

#### **MESSAGE FROM THE HOUSE**

House Chamber  
April 25, 1991

HONORABLE BOB BULLOCK  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**H.C.R. 208**, Commemorating Fiesta on the momentous occasion of its centennial celebration and commend all persons who have worked so hard to ensure the continuing success of this well loved event.

Respectfully submitted,

BETTY MURRAY, Chief Clerk  
House of Representatives

(Senator Whitmire in Chair)

**SENATE BILL 1019 ON SECOND READING**

Senator Brown asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**S.B. 1019**, Relating to local revision of the civil service law for police officers in certain municipalities.

There was objection.

Senator Brown then moved to suspend the regular order of business and take up **S.B. 1019** for consideration at this time.

The motion prevailed by the following vote: Yeas 22, Nays 5.

Yeas: Armbrister, Barrientos, Brooks, Brown, Carriker, Dickson, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Lucio, Moncrief, Ratliff, Rosson, Sims, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Bivins, Glasgow, Leedom, Montford, Sibley.

Absent: Ellis, Parker, Truan.

Absent-excused: Lyon.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Amend **S.B. 1019** by striking all below the enacting clause and substituting in lieu thereof the following:

Section 1. Subchapter A. Chapter 143, Local Government Code, is amended by adding Section 143.017 to read as follows:

Sec. 143.017. LOCAL REVISIONS. (a) This section applies only to a municipality with a population of 200,000 or more that has adopted this chapter. This section does not apply to a municipality that has adopted the Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes).

(b) In this section, "police employee association" means an organization or employee representation committee in which police officers participate that represents police officers in matters concerning wages, hours, terms, and conditions of employment.

(c) The governing body of a municipality may adopt this section enabling the chief executive officer of the municipality to enter into a memorandum of understanding with a police employee association that is selected by a majority of the police officers of the municipality as the officers' sole and exclusive agent.

(d) The memorandum of understanding may preempt or take precedence over provisions of this chapter and may address any other issues concerning wages, hours, terms, conditions of employment of police officers for the duration of the memorandum of understanding.

(e) If a memorandum of understanding specifically so provides, it may preempt or take precedence over a specific state or local civil service provision, rule, regulation, or ordinance, for the duration of the memorandum of understanding.

(f) If the provisions of this section are adopted by the governing body of the municipality, the governing body may repeal such adoption if the provisions of this section have been in effect for a period of one year.

(g) The governing body of a municipality may meet and confer with a police employee association in its discretion.

(h) The term of a memorandum of understanding adopted under the provisions of this section may not be longer than 24 months at which time the memorandum



shall expire unless renewed by both the governing body and the employee association.

(i) Upon the expiration of a memorandum of understanding, any provision of this chapter or other law that was preempted by the memorandum is reinstated and has full force and effect.

SECTION 2. This Act takes effect September 1, 1991.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

#### SENATE BILL 1019 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that S.B. 1019 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 3.

Yeas: Armbrister, Barrientos, Brooks, Brown, Dickson, Glasgow, Green, Haley, Harris of Tarrant, Henderson, Johnson, Krier, Lucio, Moncrief, Parker, Ratliff, Rosson, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Bivins, Montford, Sibley.

Absent: Carriker, Ellis, Harris of Dallas, Leedom.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.

#### RECORD OF VOTES

Senators Bivins, Glasgow, Leedom, Montford and Sibley asked to be recorded as voting "Nay" on the final passage of the bill.

(President in Chair)

#### COMMITTEE SUBSTITUTE SENATE BILL 235 ON SECOND READING

On motion of Senator Dickson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 235, Relating to service station franchises and the assignment thereof or succession thereto.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 235 ON THIRD READING**

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.S.B. 235 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Lucio, Moncrief, Parker, Ratliff, Rosson, Sibley, Tejada, Truan, Turner, Whitmire, Zaffirini.

Nays: Leedom, Montford, Sims.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.

**RECORD OF VOTES**

Senators Henderson, Leedom, Montford and Sims asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE  
SENATE BILL 512 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 512, Relating to the suspension or denial of driving privileges for certain persons under 21 years of age who engage in certain conduct or commit certain offenses.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend C.S.S.B. 512 by:

(1) Adding a new SECTION 6 (Committee Printing page 3, line 24) to read as follows:

SECTION 6. Section 26, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. SURRENDER AND RETURN OF LICENSE. (a) Except as limited by Subsection (b) of this section, the [The] Department, upon suspending or revoking a license, shall require that such license shall be surrendered to and be retained by the Department except that at the end of the period of suspension of such license, the license so surrendered shall be returned to the licensee.

(b) The Department may not return a license or reinstate a privilege to operate a motor vehicle suspended under Section 24(a-1) of the Act, unless the person whose license or privilege was suspended makes application to the Department for reinstatement of the person's license or privilege and, in addition to any other fee required by law, pays to the Department a reinstatement fee of Five Dollars (\$5.00).

(c) Fees paid under this section shall be deposited in the state treasury to the credit of the Operator's and Chauffeur's License Fund and shall be appropriated only to the Department to administer the provisions of this Act.

(2) Renumber subsequent sections.

The amendment was read and was adopted by a viva voce vote.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend C.S.S.B. 512 as follows:

(1) In the section heading of SECTION 3 of the bill (Committee Printing page 1, line 54), strike the words “adding Subsection (j)” and substitute in lieu thereof “adding Subsections (a-1) and (j).”

(2) In SECTION 3 of the bill (Committee Printing page 2):

(a) Add “or” at the end of Subdivision (5) (page 2, line 7);

(b) Following the word “Act” in Subdivision (6), (page 2, line 9) strike “; or” and substitute in lieu thereof “.”;

(c) Strike Subdivision (7)(11.10-22) and substitute in lieu thereof:

(a-1) The license of any person who was younger than 21 years of age at the time of the offense, other than a misdemeanor punishable by fine only, shall be automatically suspended on conviction of:

(1) an offense under Article 6701I-1, Revised Statutes;

(2) an offense under the Alcoholic Beverage Code involving the manufacture, delivery, possession, transportation, or use of an alcoholic beverage;

(3) an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), involving the manufacture, delivery, possession, transportation, or use of a controlled substance;

(4) an offense under Chapter 483, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a dangerous drug;

(5) an offense under Chapter 484, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a volatile chemical.

The amendment was read and was adopted by a viva voce vote.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend C.S.S.B. 512 by:

(1) Adding a new SECTION 5 (Committee Printing page 3, line 24) to read as follows:

SECTION 5. Subsection (c), Section 25, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) For the purpose of this Act, the term “conviction” shall mean a final conviction. A conviction of an offense described in Section 24(a) and Section 24(a-1) of this Act is a final conviction whether or not any portion of the sentence for the conviction was suspended or probated. Also, for the purpose of this Act, a final judgment of forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(2) Renumber subsequent sections.

The amendment was read and was adopted by a viva voce vote.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend C.S.S.B. 512 by deleting the references to "Section 24(a)(7)" and inserting in lieu thereof "Section 24(a-1)" where they appear on lines 32 and 47, page 1 of the Committee Printing.

The amendment was read and was adopted by a viva voce vote.

Senator Whitmire offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend C.S.S.B. 512, SECTION 3, by adding Subsection (k) to read as follows (Committee Printing page 3, line 9):

(k) A person whose license is suspended under Subsection (a)(7) of this section is not ineligible to receive an occupational license under Section 23A of this Act because of the suspension. In addition, suspension under Subsection (a)(7) of this section is not a suspension for physical or mental disability or impairment for purposes of eligibility to apply for an occupational license under Section 23A of this Act.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

**RECORD OF VOTE**

Senator Glasgow asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**COMMITTEE SUBSTITUTE  
SENATE BILL 512 ON THIRD READING**

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.S.B. 512 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by a viva voce vote.

**RECORD OF VOTE**

Senator Glasgow asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE  
SENATE BILL 835 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 835, Relating to a fee for international education to be collected from students at certain public institutions of higher education.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 835 ON THIRD READING**

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.S.B. 835 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**MESSAGE FROM THE HOUSE**

House Chamber  
April 25, 1991

HONORABLE BOB BULLOCK  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**S.B. 294**, Relating to the composition and compensation of the juvenile board of Caldwell County.

Respectfully submitted,  
BETTY MURRAY, Chief Clerk  
House of Representatives

(Senator Glasgow in Chair)

**SENATE BILL 1154 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1154**, Relating to disability benefits for members of the Employees Retirement System of Texas.

The bill was read second time and was passed to engrossment by a viva voce vote.

(President in Chair)

**SENATE BILL 1154 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.B. 1154** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
SENATE BILL 795 ON SECOND READING**

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 795**, Relating to permitting a sheriff to participate in decisions regarding which inmates are participants in a county jail work release program or are required to discharge fines and costs by confinement.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 795 ON THIRD READING**

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 795** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
SENATE BILL 486 ON SECOND READING**

On motion of Senator Bivins and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 486**, Relating to the duration of certain disability retirement annuities payable by the Employees Retirement System of Texas.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 486 ON THIRD READING**

Senator Bivins moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 486** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lyon.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**SENATE BILL 644 ON THIRD READING**

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

**S.B. 644**, Relating to coverage of biologically based mental illnesses under certain group health insurance programs.

The bill was read third time.

Senator Moncrief offered the following amendment to the bill:

Amend **S.B. 644** by striking all below the enacting clause and substituting in lieu thereof the following:

**SECTION 1.** Section 3(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subdivision (19) to read as follows:

(19) For purposes of this section, "serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) III-R:

- (1) schizophrenia;
- (2) paranoid and other psychotic disorders;
- (3) bipolar disorders (mixed, manic, and depressive);
- (4) major depressive disorders (single episode or recurrent); and
- (5) schizo-affective disorders (bipolar or depressive).

**SECTION 2.** Section 5(j), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(j) The trustee may not contract for a plan of group coverage or with a health maintenance organization or provide coverage directly from the fund that:

- (1) excludes or limits coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service, or human immunodeficiency virus infection; or
- (2) provides coverage for serious mental illness that is less extensive than the coverage provided for any other physical illness.

**SECTION 3.** Section 3(a), Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), is amended by adding Subdivision (16) to read as follows:

(16) For purposes of this section, "serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) III-R:

- (1) schizophrenia;
- (2) paranoid and other psychotic disorders;
- (3) bipolar disorders (mixed, manic, and depressive);
- (4) major depressive disorders (single episode or recurrent); and
- (5) schizo-affective disorders (bipolar or depressive).

**SECTION 4.** Section 4A, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), as added by Section 12, Chapter 1041, Acts of the 71st Legislature, Regular Session, 1989, is redesignated as Section 4C and is amended to read as follows:

**Sec. 4C [4A]. EXCLUDING OR LIMITING CERTAIN COVERAGES PROHIBITED.** The administrative council shall include in its basic coverage standards a standard that prohibits an institution, in contracting for group insurance or health maintenance organization coverage or in self-insuring its own coverage, from contracting for or providing in that coverage:

- (1) an exclusion or limitation on coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service, or human immunodeficiency virus infection; or
- (2) provides coverage for serious mental illness that is less extensive than the coverage provided for any other physical illness.

**SECTION 5.** Article 3.51-5A, Insurance Code, is amended to read as follows:

Art. 3.51-5A. LOCAL GOVERNMENTS PROHIBITED FROM EXCLUDING OR LIMITING CERTAIN COVERAGES. (a) A municipality, county, school district, district created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, or other political subdivision of the state that provides group health insurance coverage, health maintenance organization coverage, or self-insured health care coverage to its officers or employees or to both its officers and employees may not contract for or provide coverage that:

- (1) excludes or limits coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service, or human immunodeficiency virus infection; or
- (2) is less extensive for serious mental illness than the coverage provided for any other physical illness.

(b) For purposes of this article, "serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) III-R:

- (1) schizophrenia;
- (2) paranoid and other psychotic disorders;
- (3) bipolar disorders (mixed, manic, and depressive);
- (4) major depressive disorders (single episode or recurrent); and
- (5) schizo-affective disorders (bipolar or depressive).

SECTION 6. Section 3C, Article 3.51-6, Insurance Code, as added by Section 14, Chapter 1041, Acts of the 71st Legislature, Regular Session, 1989, is redesignated as Section 3E and is amended to read as follows:

Sec. 3E [3C]. COVERAGE OF CERTAIN ~~[HIV OR AIDS RELATED]~~ ILLNESSES. (a) No group policy of accident, health, or accident and health insurance including group contracts issued by any hospital and medical service plan corporation subject to Chapter 20 of this code and health maintenance organization subject to Chapter 20A of this code shall be delivered or issued for delivery or renewed that:

- (1) excludes or denies coverage for HIV, AIDS, or HIV-related illnesses; or
- (2) provides coverage for serious mental illness that is less extensive than the coverage provided for any other physical illness.

(b) For purposes of this section, "serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) III-R:

- (1) schizophrenia;
- (2) paranoid and other psychotic disorders;
- (3) bipolar disorders (mixed, manic, and depressive);
- (4) major depressive disorders (single episode or recurrent); and
- (5) schizo-affective disorders (bipolar or depressive).

SECTION 7. Subchapter E, Chapter 3, Insurance Code, is amended by adding Article 3.51-14 to read as follows:

Art. 3.51-14. MANDATORY PROVISION OF BENEFITS FOR CERTAIN SERIOUS MENTAL ILLNESSES

Sec. 1. DEFINITION. For purposes of this article, "serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) III-R:

- (1) schizophrenia;
- (2) paranoid and other psychotic disorders;
- (3) bipolar disorders (mixed, manic, and depressive);
- (4) major depressive disorders (single episode or recurrent); and
- (5) schizo-affective disorders (bipolar or depressive).



Sec. 2. MANDATORY COVERAGE; EXEMPTION. (a) each insurer, nonprofit hospital service plan corporation subject to Chapter 20 of this code, health maintenance organization subject to the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), employer, multiple employer, union, association, trustee, or other self-funded or self-insured welfare or benefit plan, program, or arrangement that issues group health insurance policies, enters into health care service contracts or plans, or provides for group health benefits, coverage, or services in this state for hospital, medical, or surgical expenses incurred as a result of accident or sickness shall offer and make available to each group policyholder, contract holder, employer, multiple employer, union, association, or trustee under a group policy, contract, plan, program, or arrangement that provides hospital, surgical, and medical benefits, coverage for services and benefits on an expense-incurred, service, or prepaid basis, for expenses incurred for the necessary care, diagnosis, and treatment of serious mental illnesses.

(b) This section does not apply to coverage under:

(1) a blanket accident and health insurance policy as that term is defined under Section 2, Article 3.51-6, of this code;

(2) a short-term travel policy;

(3) an accident-only policy;

(4) a limited or specified-disease policy; or

(5) a medicare supplement policy, as that term is defined under Section 1(3), Article 3.74, of this code.

Sec. 3. LEVEL OF COVERAGE. The coverage offered under this article for services and benefits for the condition of serious mental illness must be at least as favorable as the coverage made available for services and benefits provided by the insuring entity for other major illnesses and must include the same durational limits, amount limits, deductibles, and coinsurance factors.

SECTION 8. This Act takes effect September 1, 1991, and applies to an insurance policy, contract, plan, or evidence of coverage that is delivered, issued for delivery, or renewed on or after January 1, 1992. A policy, contract, plan, or evidence of coverage delivered, issued for delivery, or renewed before January 1, 1992, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator Moncrief and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed by a viva voce vote.

#### RECORD OF VOTES

Senators Bivins and Montford asked to be recorded as voting "Nay" on the final passage of the bill.

#### SENATE BILL 434 ON THIRD READING

Senator Green moved that the regular order of business be suspended and that S.B. 434 be placed on its third reading and final passage:

S.B. 434, Relating to voter registration activities conducted by institutions of higher education and certain state agencies.

The motion prevailed by the following vote: Yeas 19, Nays 8.

Yeas: Armbrister, Barrientos, Brooks, Carriker, Ellis, Glasgow, Green, Haley, Johnson, Lucio, Moncrief, Montford, Parker, Rosson, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Bivins, Brown, Harris of Tarrant, Henderson, Krier, Leedom, Sibley, Sims.

Absent: Dickson, Harris of Dallas, Ratliff.

Absent-excused: Lyon.

The bill was read third time.

Senator Leedom offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend S.B. 434, SECTION 1, Sec. 13.061 (a), page 1, line 31, by striking the word "shall" and inserting the word "may" in place thereof.

The amendment was read.

On motion of Senator Green, the amendment was tabled by the following vote: Yeas 19, Nays 9.

Yeas: Barrientos, Brooks, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Johnson, Lucio, Moncrief, Montford, Parker, Rosson, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Harris of Tarrant, Henderson, Krier, Leedom, Sibley, Sims.

Absent: Harris of Dallas, Ratliff.

Absent-excused: Lyon.

Senator Brown offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend S.B. 434, SECTION 1, Sec. 13.062 (b), page 2, line 10, by striking the word "shall" and inserting the word "may" in place thereof.

The amendment was read.

On motion of Senator Green, the amendment was tabled by the following vote: Yeas 19, Nays 9.

Yeas: Barrientos, Brooks, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Johnson, Lucio, Moncrief, Montford, Parker, Rosson, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Harris of Tarrant, Henderson, Krier, Leedom, Sibley, Sims.

Absent: Harris of Dallas, Ratliff.

Absent-excused: Lyon.

Senator Brown offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend S.B. 434 SECTION 1, Sec. 13.062 (a), page 1, lines 59-60, by striking the following words: "and any other appropriate state agency designated by the Secretary of State".

The amendment was read.

On motion of Senator Green and by unanimous consent, the amendment was tabled by a viva voce vote.

The bill was finally passed by a viva voce vote.

**RECORD OF VOTES**

Senators Bivins, Brown, Harris of Tarrant, Henderson, Krier, Leedom, Sibley and Sims asked to be recorded as voting "Nay" on the final passage of the bill.

**NOTICE OF SESSION TO HOLD  
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Haley announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 8:00 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

**RECESS**

On motion of Senator Brooks, the Senate at 1:02 p.m. took recess until 3:30 p.m. today.

**AFTER RECESS**

The Senate met at 3:30 p.m. and was called to order by the President.

**MESSAGE FROM THE HOUSE**

House Chamber  
April 25, 1991

HONORABLE BOB BULLOCK  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**H.B. 651**, Relating to the collection of local hotel occupancy taxes.

**H.B. 2395**, Relating to an unofficial election for students in kindergarten through 12th grade held in conjunction with a general, special, or primary election.

**H.B. 1430**, Relating to certain payments by the state for contributions to the federal old age and survivors insurance coverage for certain judges.

Respectfully submitted,

BETTY MURRAY, Chief Clerk  
House of Representatives

**CO-SPONSORS OF HOUSE CONCURRENT RESOLUTION 208**

On motion of Senator Krier and by unanimous consent, Senators Tejeda, Zaffirini and Sims will be shown as Co-sponsors of H.C.R. 208.

**FLOOR PRIVILEGES GRANTED**

On motion of Senator Brooks and by unanimous consent, floor privileges were granted to professional staff to be seated at the desk of any Senator who deems it necessary during the presentation of C.S.S.B. 35.

**REPORTS OF STANDING COMMITTEES**

By unanimous consent, Senator Brooks submitted the following report for the Committee on Health and Human Services:

**S.B. 989**

**S.B. 1115**

By unanimous consent, Senator Glasgow submitted the following report for the Committee on State Affairs:

**H.B. 991**

**C.S.H.B. 640**

**COMMITTEE SUBSTITUTE  
SENATE BILL 35 ON SECOND READING**

Senator Parker asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**C.S.S.B. 35**, Relating to creation, powers, and duties of the Texas Department of Natural Resources; transferring appropriations.

There was objection.

Senator Parker then moved to suspend the regular order of business and take up **C.S.S.B. 35** for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Johnson, Krier, Leedom, Lucio, Moncrief, Montford, Parker, Ratliff, Rosson, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Harris of Tarrant, Harris of Dallas, Henderson, Sibley, Sims.

Absent-excused: Lyon.

The bill was read second time.

Senator Parker offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **C.S.S.B. 35** by striking all below the enacting clause and substituting in lieu thereof the following:

**SECTION 1.** Title 5, Health and Safety Code, is amended by adding Subtitle E to read as follows:

**SUBTITLE E. TEXAS DEPARTMENT OF NATURAL RESOURCES****CHAPTER 421. ESTABLISHMENT OF DEPARTMENT****SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 421.001. PURPOSE OF CHAPTER.** It is the purpose of this chapter to:

- (1) create an agency for the comprehensive administration and enforcement of laws pertaining to pollution of the land, air, and water of this state;**
- (2) consolidate environmental protection and pollution control programs under that single agency to provide more effective and efficient pollution prevention, reduction, and control;**

(3) provide a uniform, timely, fair, and efficient program for reviewing permit applications and determining allowable contamination of land, air, or water, or any combination thereof, from a single facility or source or combination of related facilities or sources;

(4) improve the ability of the state to conduct environmental research and obtain information, improve the scientific basis of environmental regulation, and improve the state's ability to identify and analyze new environmental problems and adopt new policies that prevent, reduce, and minimize pollution and its risks and harm;

(5) encourage public participation in pollution control and prevention decisions and ensure public accountability for such decisions;

(6) establish a strong program of enforcement of laws pertaining to the pollution of the land, air, and water of this state; and

(7) provide technical and administrative support to the State Soil and Water Conservation Board in administering programs under its jurisdiction pertaining to agricultural pollution.

Sec. 421.002. DEPARTMENT. (a) The Texas Department of Natural Resources is created as a state agency to:

(1) protect and improve environmental quality pursuant to the laws of this state and the United States;

(2) protect natural resources and public health and welfare from actual and potential harm from wastes, products, and other substances that have been or may be released into the environment;

(3) prevent, reduce, or minimize pollution at its sources and provide for control and cleanup of land, air, and water pollution;

(4) identify, analyze, monitor, and report on existing and potential pollution risks to humans and the environment;

(5) assist regional and local government agencies in protecting humans and the environment from pollution risks;

(6) promote pollution prevention, reduction, and minimization by increasing technology transfer, technical assistance, and information sharing; and

(7) provide information and facilitate information sharing that helps individuals, business entities, and local governments reduce pollution risks.

(b) In undertaking its mission, the department shall be guided by the goal of improving overall environmental quality as effectively and efficiently as possible.

(c) In undertaking its mission, the department shall cooperate with federal agencies, other state agencies, local governments, and the general public.

Sec. 421.003. APPLICATION OF SUNSET ACT. The Texas Department of Natural Resources is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the agency is abolished and this subtitle expires January 1, 2005.

Sec. 421.004. CONSTRUCTION OF SUBTITLE. This subtitle shall be liberally construed to allow the department, the board, and the executive director to carry out their powers and duties in an efficient and effective manner. The intent of this subtitle is to consolidate existing pollution regulatory agencies and programs without substantive change in existing law except as otherwise expressly provided.

Sec. 421.005. DEFINITIONS. In this subtitle:

(1) "Agricultural pollution" means pollution by agriculture:

(A) of any water in the state under Chapter 26, Water Code;

(B) of any air in the state under Chapter 382, Health and Safety Code;

(C) of any land in the state under Chapter 361, Health and Safety Code; or

(D) of any combination thereof under such statutes or under any other statute administered or enforced by the department.

(2) "Agriculture" means cultivating the soil; producing crops for human food, animal feed, planting seed, or fiber; ginning or compressing cotton; storing grain; floriculture; viticulture; horticulture; dairying; raising or keeping livestock or poultry; raising or keeping exotic livestock or fowl; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop rotation procedure.

(3) "Board" means the Texas Department of Natural Resources Board.

(4) "Department" means the Texas Department of Natural Resources.

(5) "Environmental media" means land, air, and water.

(6) "Executive director" means the executive director of the Texas Department of Natural Resources.

(7) "Local government" means a county or a municipality.

(8) "Natural resources" means all land, air, water, flora, and fauna.

(9) "Office of hearings" means the division of the department responsible for performing its quasi-judicial functions.

(10) "Permit" means any permit, license, certificate, approval, registration, consent, or other form of authorization from the department required by law or rule.

(11) "State Soil and Water Conservation Board" means the state agency created under Subchapter B, Chapter 201, Agriculture Code.

[Sections 421.006-421.020 reserved for expansion]

#### SUBCHAPTER B. BOARD

Sec. 421.021. BOARD. The Texas Department of Natural Resources Board is the governing body of the department.

Sec. 421.022. MEMBERS OF THE BOARD; APPOINTMENT. The board is composed of six members appointed by the governor with the advice and consent of the senate.

Sec. 421.023. QUALIFICATIONS. (a) The governor shall appoint to the board persons who have demonstrated commitment and concern for protecting the environment and who are knowledgeable in conservation of natural resources.

(b) A person appointed to the board shall disclose whether that person or that person's spouse:

(1) has, or during the two years prior to appointment has had, a financial interest in any entity regulated by the department. A financial interest means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a regulated entity; or

(2) is, or during the two years previous to appointment has been, employed or retained by any holder of or applicant for a permit issued by the department; or

(3) participates, or during the two years previous to appointment, has participated directly or indirectly in the management of a business entity or other organization that is regulated by the department or receives funds from the department; or

(4) owns or controls, or during the two years previous to appointment, has owned or controlled directly or indirectly more than a 10 percent interest in a business entity or other organization that is regulated by the department or receives funds from the department.

(c) A disclosure under Subsection (b) shall be made in writing to the governor and lieutenant governor prior to any consideration of confirmation of the person's

appointment by the senate and shall be revised immediately on any occurrence that would make a prior disclosure inaccurate. Any disclosure under this section shall be made a public record and shall name the entities whose relation with the person or person's spouse required the disclosure.

(d) A member of the board subject to the disclosure requirements of this section may not participate in deliberations or other department action involving an application, hearing, enforcement action, or any other matter before the department directly involving an entity whose relation to the person or person's spouse is required to be disclosed by this section.

(e) A knowing failure to disclose a relationship required to be disclosed under this section or a knowing failure to refrain from participation in department deliberations or other action as required by this section is a Class A misdemeanor. A member of the board is automatically removed from the board on final conviction of a criminal offense under this subsection. A permit issued in favor of an entity with a relation to a board member which is required to be disclosed by this section is voidable if the member participated in any way in deliberations or other department actions regarding that permit in violation of Subsection (d).

(f) Appointments to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin.

Sec. 421.024. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment or maintain during service on the board the qualifications required for appointment to the board under Section 421.023(b) or intentionally violates Section 421.023(d) or (e);

(2) cannot discharge the member's duties for a substantial portion of the term for which the member is appointed because of illness or disability; or

(3) is absent from more than a third of the regularly scheduled board meetings that the member is eligible to attend during each calendar year, except when the absence is excused by a majority vote of the board.

(b) The validity of a board action is not affected by the fact that it was taken when a ground for removal of a board member existed.

(c) If a board member or the executive director has knowledge that a potential ground for removal exists, the member or director shall notify the chair of the board of that ground. The chair shall then notify the governor that a potential ground for removal exists.

Sec. 421.025. TERMS OF OFFICE. (a) Board members serve for staggered six-year terms, with the terms of two members expiring February 1 of each odd-numbered year.

(b) A person appointed to the board may not serve for more than 12 years.

Sec. 421.026. FULL-TIME SERVICE; COMPENSATION. (a) Each board member serves full-time.

(b) A board member is entitled to receive such compensation as the legislature may set.

Sec. 421.027. OFFICERS; MEETINGS. (a) The governor shall designate the chair of the board, who serves until the governor designates a different chair.

(b) The board shall elect a vice-chair from its members.

(c) The chair, or in the chair's absence the vice-chair, shall call and preside at all meetings and hearings of the board.

(d) The board shall hold regular meetings at times specified by board order. The chair shall call a special meeting on written request signed by at least two board members and may call a special meeting as the chair deems appropriate. The chair or vice-chair shall give the other members reasonable notice before holding a special meeting.

[Sections 421.028-421.050 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF BOARD

Sec. 421.051. GENERAL POWERS. (a) The board has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities.

(b) The board may call and hold hearings, receive evidence at hearings, administer oaths, issue subpoenas to compel the attendance of witnesses and the production of papers and documents and other things, and make findings of fact and decisions with respect to its jurisdiction under law and under rules, orders, permits, and other actions adopted, issued, or taken by the board.

Sec. 421.052. RULES AND FEES. (a) The board may propose and shall adopt all rules necessary to carry out the powers and duties of the department.

(b) Pursuant to legislative authorization, the board may establish reasonable fees, including fees that cover the direct costs of the department's regulatory programs.

Sec. 421.053. MEMORANDA OF UNDERSTANDING. (a) The board and office of hearings by rule shall develop memoranda of understanding as necessary to clarify and provide for their respective duties, responsibilities, or functions on any matter under the jurisdiction of the board or office of hearings that is not expressly assigned to either the board or to the office of hearings.

(b) The board may enter into a memorandum of understanding with any federal agency or other state agency. The board shall adopt by rule any memorandum of understanding so entered.

(c) The board shall enter into a memorandum of understanding with the Texas Department of Commerce to coordinate assistance to any small business in applying for permits from the department required by law for the operation of the business.

(d) The board shall enter into a memorandum of understanding with the State Soil and Water Conservation Board regarding technical and administrative support and administration of the provisions of Subchapter B, Chapter 201, Agriculture Code, pertaining to agricultural pollution and to clarify and provide for their respective duties, responsibilities, and functions.

Sec. 421.054. GENERAL POLICY. Except as otherwise provided by law, the board by rule shall establish and approve general policies of the department.

Sec. 421.055. BUDGET APPROVAL. The board shall examine and approve all budget recommendations for the department that are to be transmitted to the governor and the legislature, except that of the office of public counsel.

Sec. 421.056. ADVISORY COUNCILS. In addition to advisory councils established by other provisions of this code or other authority, the board may create and consult with any advisory councils that the board considers appropriate, including but not limited to advisory councils representing agriculture, ranching, natural resources conservation, petroleum exploration and production, the petrochemical industry, and other interests.

Sec. 421.057. STANDARDS OF CONDUCT. The board shall provide to its members, appointees, and the department's employees as often as is necessary information regarding their qualifications under this title and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 421.058. PUBLIC TESTIMONY POLICY. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the department.

Sec. 421.059. BOARD AND DEPARTMENT RESPONSIBILITY POLICY. The board shall develop and implement policies that clearly separate the respective responsibilities of the board and the department.



Sec. 421.060. GIFTS AND GRANTS. (a) The board may accept money, gifts, and other assistance from any source to carry out the board's powers and duties.

(b) The board shall maintain and publish a record of all money, gifts, assistance, and other things of value received. The record shall state the amount or value of the gift or assistance, the purpose for which it was used, and the identity of the donor, including whether the donor is a holder of or applicant for a permit issued by the department or is affiliated with an entity or entities regulated by the department.

Sec. 421.061. CONSERVATION AND QUALITY OF ENVIRONMENT. The board shall administer the law so as to promote the maximum conservation and protection of the quality of the environment and natural resources of the state consistent with the accommodation of multiple uses of those natural resources.

[Sections 421.062-421.100 reserved for expansion]

#### SUBCHAPTER D. ADMINISTRATIVE PROVISIONS

Sec. 421.101. AUDIT. The financial transactions of the department are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Sec. 421.102. FIELD OFFICES. The department is authorized to establish, alter, consolidate, maintain, or discontinue such regional, district, local, or other field offices or laboratories as deemed necessary to carry out the functions now or hereafter vested in the department.

Sec. 421.103. PUBLIC INFORMATION RELATING TO DEPARTMENT. The department shall prepare information of public interest describing the functions of the department and describing the department's procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the general public and the appropriate state agencies.

Sec. 421.104. PROGRAM ACCESSIBILITY. The department shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the department's programs.

Sec. 421.105. COPIES OF DOCUMENTS AND PROCEEDINGS. (a) Except as otherwise provided by this title, on application of any person the department shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the department. A certified copy with the seal of the department and the signature of the chair of the board or the executive director or chief clerk is admissible as evidence in any court or administrative proceeding.

(b) The department shall provide in its rules the fees that will be charged for copies and may furnish certified or uncertified copies to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the department, except that the fees set by the department for copies prepared by the department of hearings may not exceed those prescribed in Article 3913, Revised Statutes.

Sec. 421.106. INSPECTION OF RECORDS. All information, documents, and data collected by the department in the performance of its duties are the property of the state. Except as otherwise provided by law, all records are open to inspection by any person during regular office hours.

Sec. 421.107. COMPLAINTS. (a) The department shall keep an information file about each complaint filed with the department.

(b) If a written complaint is filed relating to an action of the department or an entity regulated by the department, the executive director shall review the complaint and, quarterly or more often until final disposition of the complaint, shall notify the

parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Sec. 421.108. ENFORCEMENT. The department may enforce the terms and conditions of any permit, certified filing, certificate of adjudication, order, standard, law, or rule issued or administered by the department by injunction, mandamus, contempt of court, or other appropriate civil or criminal remedy in any court of competent jurisdiction. The attorney general shall represent the department in all such actions.

Sec. 421.109. REPORTS TO GOVERNOR AND LEGISLATURE. (a) The department shall submit biennially a written report to the governor and the members of the legislature assessing the environmental quality of the land, air, and water of the state. Each report shall include a statement of department activities and the board's recommendations for necessary and desirable legislation to improve the quality of the state's environment.

(b) The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

Sec. 421.110. SEAL. The department shall have a seal bearing the words "Texas Department of Natural Resources" encircling the oak and olive branches common to other official seals.

Sec. 421.111. CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a trade association of an industry regulated by the department may not be a member of the board or an employee of the department.

(b) A person who is the spouse of an officer, managerial employee, or paid consultant of a trade association in an industry regulated by the department may not be a member of the board or an employee of the department compensated at or above the amount prescribed for step 1, salary group 17, of the position classification salary schedule, including exempt positions, according to the General Appropriations Act.

(c) For the purposes of Subsections (a) and (b), a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department may not serve as a board member, chief administrative law judge, or public counsel.

[Sections 421.112-421.120 reserved for expansion]

#### SUBCHAPTER E. EXECUTIVE DIRECTOR

Sec. 421.121. APPOINTMENT OF EXECUTIVE DIRECTOR. The board shall appoint an executive director, who serves at the will of the board.

Sec. 421.122. GENERAL RESPONSIBILITIES OF EXECUTIVE DIRECTOR. The executive director shall, under the general supervision and direction of the board, manage the administrative affairs of the department and perform all other acts required by this chapter or other law administered or enforced by the department relating to the protection of the environment of the state. The executive director shall ensure that all actions of the department are consistent with the rules, policies, and procedures established pursuant to this chapter. The position of executive director is one of full-time employment.

Sec. 421.123. DEPUTY DIRECTORS AND PERSONNEL. The executive director may employ any deputy directors and personnel that the director

determines appropriate. The deputy directors and personnel of the department are under the direction and supervision of the executive director, and their powers and duties shall be those required by the board and the executive director.

Sec. 421.124. ADMINISTRATIVE ORGANIZATION OF DEPARTMENT. Subject to approval of the board, the executive director may organize and reorganize the administrative sections and divisions of the department in a manner and in a form that will achieve the greatest efficiency and effectiveness.

Sec. 421.125. INFORMATION REQUEST TO BOARD. The executive director may obtain from the board information relating to any matter pending before the department. On receiving a request from the executive director, the board shall make the requested information available to the executive director as expeditiously as possible, but not later than the 90th day after the date on which information is requested.

Sec. 421.126. CAREER LADDER PROGRAM. The executive director or the director's designee shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting.

Sec. 421.127. MERIT PAY. The executive director or the director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this section.

Sec. 421.128. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the department's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the department's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address areas of significant underutilization in the department's work force of all persons for whom federal or state guidelines encourage a more equitable balance.

(b) The policy statement shall be filed annually with the governor's office. The governor's office shall develop a biennial report to the legislature based on the information submitted. This report may be made individually or as a part of other biennial reports made to the legislature.

Sec. 421.129. APPEARANCES AT HEARINGS. The executive director or the director's designee shall appear on behalf of the department at hearings of the department and hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's environment. The executive director shall be named as a party in hearings before the board or office of hearings.

Sec. 421.130. CONTRACTS. The executive director, on behalf of the board, may negotiate with and, with the consent of the board, enter into contracts with federal agencies, other states, agencies or political subdivisions of this state, or any other entity to carry out the powers, duties, and responsibilities of the department.

Sec. 421.131. TRAVEL EXPENSES. The executive director is entitled to receive actual and necessary travel expenses. Other employees of the department are entitled to receive travel expenses pursuant to Article 6823a, Revised Statutes.

Sec. 421.132. CUSTODIAN OF RECORDS. The executive director is the custodian of all records of the department other than those in the office of public counsel.

[Sections 421.133-421.140 reserved for expansion]

SUBCHAPTER F. AGRICULTURE DIVISION

Sec. 421.141. CREATION AND GENERAL RESPONSIBILITIES. The agriculture division is established as the division of the department to administer the department's programs and enforce laws related to agriculture and agricultural pollution.

Sec. 421.142. AGRICULTURE DIRECTOR. The executive director shall appoint an agriculture director to administer and superintend the agriculture division.

Sec. 421.143. AGRICULTURAL POLLUTION. In addition to providing technical, enforcement, and administrative support to the State Soil and Water Conservation Board, the agriculture division shall, pursuant to Sections 201.0221 and 201.0222, Agriculture Code, receive permit applications, complaints, or allegations of violations of permits, statutes, and rules pertaining to agricultural pollution that may be directed or referred by the State Soil and Water Conservation Board under Sections 201.0221 and Section 201.0222, Agriculture Code. The agriculture division shall administer such referrals in the same manner as other action of the department.

[Sections 421.144-421.150 reserved for expansion]

SUBCHAPTER G. OFFICE OF PUBLIC COUNSEL

Sec. 421.151. CREATION AND GENERAL RESPONSIBILITIES. (a) The office of public counsel is established as an independent division of the department to represent the interests of the public in protecting, maintaining, and enhancing a safe, healthful, biologically diverse, and productive environment and preserving the natural heritage of the State of Texas.

(b) The office of public counsel shall assess the environmental impact of rules, orders, permits, and other actions adopted, issued, or taken by the department and shall be an advocate in its own name of positions most beneficial to the environment as determined by the public counsel.

Sec. 421.152. CHIEF EXECUTIVE. (a) The chief executive of the office of public counsel is the public counsel. The public counsel is appointed by the governor with the advice and consent of the senate to a two-year term that expires on February 1 of the final year of the term.

(b) The public counsel shall be a resident of the state who is licensed to practice law in the state, has demonstrated a strong commitment to and involvement in efforts to safeguard the environment, and possesses the knowledge and experience to practice effectively in proceedings before the department.

Sec. 421.153. ADMINISTRATION. (a) The public counsel shall administer and superintend the operation of the office of public counsel independently of the department. The public counsel shall prepare and approve all budget recommendations on behalf of the office of public counsel that are transmitted to the governor and the legislature.

(b) The public counsel is the custodian of public records of the office of public counsel.

Sec. 421.154. EMPLOYEES AND EXPERTS. (a) The public counsel may employ or contract with such attorneys, scientists, economists, engineers, consultants, or other employees or experts as deemed necessary to carry out the provisions of this subchapter, as authorized by the legislature.

(b) No person may, while serving as an employee of the office of public counsel and for a period of two years following the termination of such employment, have a direct or indirect financial interest in any holder of or applicant for a permit issued

by the department or provide legal services directly or indirectly to or be employed in any capacity by such an entity, its parent, or its subsidiaries.

Sec. 421.155. AUTHORITY. (a) The office of public counsel may:

(1) appear or intervene as a matter of right as a party or otherwise on behalf of the public, as a class, in all proceedings before the department;

(2) intervene as a matter of right or otherwise appear in any judicial proceedings involving or arising out of any proceeding in which the office of public counsel was authorized to appear;

(3) have the same access as any party other than the department to all records of the department;

(4) obtain discovery of any nonprivileged matter that is relevant to any proceeding before the department;

(5) represent the public with respect to complaints concerning matters before the department; and

(6) recommend legislation to the legislature that in the public counsel's judgment would positively affect the interests of the public in the environmental quality of the state.

(b) Department personnel may assist the public counsel in investigations, lawsuits, and by conducting laboratory tests, as requested by the public counsel.

Sec. 421.156. OTHER REPRESENTATION. (a) Nothing in this subchapter limits the authority of the department to represent the public interest.

(b) The appearance of the public counsel in any proceeding in no way precludes the appearance of other parties on behalf of citizens of the state.

(c) The public counsel may not be compelled to be aligned with any other party to a proceeding under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 421.157. APPEAL. The public counsel may initiate judicial review of a ruling, decision, or other act of the department.

[Sections 421.158-421.170 reserved for expansion]

#### SUBCHAPTER H. OFFICE OF HEARINGS

Sec. 421.171. CREATION AND RESPONSIBILITIES. (a) The office of hearings is established as a division of the department to perform the quasi-judicial functions of the department.

(b) The office of hearings may call and hold hearings, receive evidence at hearings, administer oaths, issue subpoenas to compel the attendance of witnesses and the production of papers and documents and other things, and make findings of fact and decisions with respect to its jurisdiction under law and under rules, orders, permits, licenses, certificates, and other actions adopted, issued, or taken by the department. The office of hearings may receive submissions of issues identified for appeal in contested case hearings, which shall not be limited to such issues.

Sec. 421.172. CHIEF EXECUTIVE. (a) The chief executive of the office of hearings is the chief administrative law judge. The board shall appoint the chief administrative law judge with the advice and consent of the senate to a two-year term that expires on February 1 of the final year of the term. The board may remove the chief administrative law judge for cause.

(b) The chief administrative law judge shall be a resident of the state who has been licensed to practice law in the state for at least eight years at the time of the appointment and who has demonstrated experience, either as an attorney or as a member of the judiciary or both, in the practice of administrative law or in the trial of contested matters.

Sec. 421.173. PERSONNEL. The chief administrative law judge may employ such assistant administrative law judges and other personnel as the legislature authorizes. Assistant administrative law judges employed in the office of hearings must be attorneys licensed to practice law in this state and must be

employed by the office of hearings. No employee of the office of hearings may be employed by or perform the duties of an employee of another division of the department.

Sec. 421.174. CHIEF CLERK. The chief administrative law judge shall appoint a chief clerk who shall issue notice of hearings before the office of hearings and serve as custodian of records of the office of hearings.

Sec. 421.175. ADMINISTRATION. The chief administrative law judge shall administer and superintend the operation of the office of hearings independently of the department. The chief administrative law judge shall prepare and approve all budget recommendations on behalf of the office of hearings that are transmitted to the legislature.

Sec. 421.176. DELEGATION OF RESPONSIBILITY. (a) The board shall delegate to the office of hearings the responsibility to hear all contested cases before the department and to hold hearings and receive any public comment that is required by law and may delegate the responsibility to hear any other matter before the department.

Sec. 421.177. ADMINISTRATIVE PROCEDURE. (a) The office of hearings shall conduct all administrative hearings in contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), which shall apply fully to the department except to the extent that this section specifically provides a different or conflicting requirement, in which case this section controls, or where otherwise specifically required by law, including Sections 382.0561-382.0563.

(b) In conducting a hearing under this subchapter, an administrative law judge in the office of hearings shall consider all applicable department rules or policies. The department shall publish and make available all department rules and policies.

(c)(1) Unless required for the disposition of ex parte matters authorized by law:

(A) an administrative law judge of the office of hearings may not communicate, directly or indirectly, with any department employee, board member, party, or any other person in connection with any issue of fact or law pertaining to a contested case in which the department, party, or person is involved or has an interest; and

(B) a department employee, board member, party, or any other person may not attempt, directly or indirectly, to influence the findings of fact or the application of law or rules in a contested case by an administrative law judge of the office of hearings except by proper evidence, pleadings, and legal argument with notice and opportunity for all parties to participate.

(2) The prohibitions of this subsection do not apply to communications between employees of the office of hearings in the proper performance of their duties.

(d) If a board member or administrative law judge receives a communication prohibited by Subsection (c), it is the board member's or administrative law judge's duty to terminate the improper communication. The board member or administrative law judge receiving the improper communication shall report the communication in the record of the contested case.

(e) After hearing evidence and receiving legal arguments, an administrative law judge of the office of hearings shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The administrative law judge shall make a proposal for decision to the board and shall serve the proposal for decision on all parties. The board shall consider and act on the proposal for decision.

(f) If a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the board by law, then on joint motion of all parties or

on the administrative law judge's own motion, an administrative law judge of the office of hearings may certify such policy issues to the board. A certification request shall contain a statement of the policy issue to be determined and a statement of all relevant facts sufficient to show fully the nature of the controversy. The board may receive written or oral statements from parties to the hearing or the administrative law judge on the policy issue certified. The board must answer policy issues within 60 days of certification or in its discretion may decline to answer. If the board fails to answer a policy issue within 60 days of certification, the board shall be deemed to have declined to answer. The administrative law judge shall proceed with the contested case and make a proposal for decision as required by Subsection (e).

(g)(1) The board may overturn an underlying finding of fact that serves as the basis for a decision in a contested case only on the grounds the finding was against the great weight of the evidence.

(2) The board may overturn a conclusion of law in a contested case only on the grounds that the conclusion was clearly erroneous in light of precedent and applicable rules.

(3) If a decision in a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the board by law, the board may in the exercise of such discretion or judgment reject a proposal for decision as to the ultimate finding for reasons of policy only.

(4) The board shall issue written rulings, orders, or decisions in all contested cases and shall fully explain therein the reasoning and grounds for overturning each finding of fact or conclusion of law or for rejecting or approving any proposal for decision on an ultimate finding.

[Sections 421.178-421.200 reserved for expansion]

#### SUBCHAPTER I. PERMITS

Sec. 421.201. APPLICATION. (a) If any facility, source, activity, or condition, or related combination thereof, is required to be permitted by the department under Chapter 361 or 382, Health and Safety Code, Chapter 26, Water Code, or any combination thereof or other statute administered or enforced by the department, the applicant or applicants shall simultaneously file with the department applications for all such permits, provided that if simultaneous filing is not practical an applicant shall certify in each application filed separately with the department whether other such permits have been or may reasonably be expected to be applied for in the course of attaining full operation or capacity of the activity, facility, source, or condition. The certification shall cross-reference related applications that have been filed.

(b) The department may issue permits under Chapter 361 or 382, Health and Safety Code, or Chapter 26, Water Code, or any other statute or rules administered or enforced by the department.

(c) Permit applications pertaining to agricultural pollution shall be filed with the State Soil and Water Conservation Board under Section 201.0221, Agriculture Code.

(d) The department shall consider the interrelationships and effects of the activity or activities sought to be permitted on all environmental media as a unified whole and for good cause may order consolidation of related applications. In issuing any permit, the department shall minimize to the greatest extent possible the transfer of risks between or among environmental media.

[Sections 421.202-421.250 reserved for expansion]

#### SUBCHAPTER J. ENFORCEMENT

Sec. 421.251. JUDICIAL REVIEW OF ACTS OF THE DEPARTMENT.

(a) A person affected by a ruling, order, decision, or other act of the department may

file a petition to review, set aside, modify, or suspend the ruling, order, decision, or other act of the department.

(b) A person affected by an act other than a ruling, order, or decision must file the petition within 30 days after the department acted.

(c) Venue for all actions against the department is in district court in Travis County except that when the state, on behalf of the department, has brought suit against any person in some other jurisdiction, a cross action may be pursued.

Sec. 421.252. CITATION. All petitions filed by and against the department shall be in the name of the department. In all suits against the department, citation must be served on both the executive director and the attorney general.

Sec. 421.253. LOCAL GOVERNMENTS. (a) A local government may make recommendations to the department concerning a rule, determination, variance, or order or request the department to assess administrative penalties or initiate enforcement action against any person in violation of any statute or rule administered by the department that affects an area within the local government's territorial jurisdiction. The department shall give maximum consideration to a local government's recommendations or requests. The board shall provide the local government the opportunity to present its case through its local counsel.

(b) Any local government of the state affected by any activity, facility, source, or condition regulated by or under the jurisdiction of the department may bring a civil action for injunctive relief, civil penalties, or both, against any person responsible for the activity or condition or an owner or operator of the facility or source who is in violation of a rule, regulation, permit, permit condition, or order of or law administered by the department.

(c) No action may be commenced:

(1) prior to 30 days after the plaintiff has given notice of the alleged violation to the department and to any alleged violator of the standard, limitation, or order; or

(2) if the department has commenced and is diligently prosecuting a civil or criminal action to require compliance with a standard, limitation, or order, but in any such action any local government may intervene as a matter of right.

(d) It is not a defense to an action under Subsection (b) of this section that the local government has not initiated or exhausted administrative remedies under Subsection (a). It is a defense to an action brought under Subsection (b) that administrative or civil penalties have been imposed or injunctive relief has been obtained for the alleged violation.

(e) Any action brought under Subsection (b) may be brought in the county in which the alleged violation occurred or in Travis County.

(f) The court shall grant, without bond or other undertaking by the local government, any prohibitory or mandatory injunction or restraining order the facts may warrant.

(g) Any final order issued pursuant to this section may award costs of litigation, reasonable attorney fees, or other costs including expert witness fees, to any local government that prevails or substantially prevails, whenever the order includes a determination that such award is appropriate.

(h) This section is cumulative of any other remedy provided by law to a local government.

SECTION 2. (a) Notwithstanding Section 1 of this Act, effective on the delegation of NPDES permit authority to the State of Texas by the administrator of the United States Environmental Protection Agency under Section 402(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1342), Subchapter O, Chapter 421, Health and Safety Code, is amended by adding Section 421.106 to read as follows:



Sec. 421.106. INSPECTION OF RECORDS. (a) All information, documents, and data collected by the department in the performance of its duties are the property of the state.

(b) Except as provided by Subsection (c), records, reports, data, or other information obtained relative to or from sources or potential sources of discharges of water pollutants shall be available to the public during regular office hours.

(c) If a showing satisfactory to the executive director or the chief administrative law judge is made by any person that the records, reports, data, or other information, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, those records, reports, data, or other information shall be considered confidential.

(d) This section does not make confidential any effluent data, including effluent data in records, reports, other information, permits, draft permits, and permit applications.

(e) Records, data, or other information considered confidential may be disclosed or transmitted to officers, employees, or authorized representatives of the state or of the United States with responsibilities in water pollution control. However, this disclosure or transmittal may be made only after adequate written assurance is given to the executive director or chief administrative law judge that the confidentiality of the disclosed or transmitted records, data, or other information will be afforded all reasonable protection allowed by law by the receiving officer, employee, or authorized representative on behalf of, and under the authority of, the receiving agency or political entity.

(f) The executive director or chief administrative law judge may not disclose or transmit records, data, or other information considered confidential if the director or administrative law judge has reason to believe the recipient will not protect the confidentiality of the records, data, or other information to the most reasonable extent provided by law.

(b) Should delegation of NPDES permit authority to the State of Texas occur prior to January 1, 1993, the Texas Water Commission shall administer that permit authority in accordance with Section 421.106 as added by this section until that date. References in Section 421.106 as added by this section to the department shall be construed as references to the Texas Water Commission and references to the executive director and chief administrative law judge shall be construed as reference to the executive director of the Texas Water Commission and the chief hearings officer of the Texas Water Commission until that date.

SECTION 3. Subdivision (2), Section 361.003, Health and Safety Code, is amended to read as follows:

(2) "Board of health" means the Texas Department of Natural Resources Board ~~[of Health]~~.

SECTION 4. Subdivision (6), Section 361.003, Health and Safety Code, is amended to read as follows:

(6) "Commissioner" means the executive director of the Texas Department of Natural Resources ~~[commissioner of health]~~.

SECTION 5. Subdivision (8), Section 361.003, Health and Safety Code, is amended to read as follows:

(8) "Department" means the Texas Department of Natural Resources ~~[Health]~~.

SECTION 6. Section 361.015, Health and Safety Code, is amended to read as follows:

Sec. 361.015. HEALTH DEPARTMENT'S JURISDICTION: RADIOACTIVE WASTE. The Texas Department of Health ~~[department]~~ is the state agency under Chapter 401 that regulates radioactive waste activities not preemptively regulated by the federal government.

SECTION 7. Section 361.018, Health and Safety Code, is amended to read as follows:

Sec. 361.018. ~~[COMMISSION'S]~~ JURISDICTION OVER HAZARDOUS WASTE COMPONENTS OF RADIOACTIVE WASTE. (a) The department ~~[commission]~~ has the powers under this chapter necessary or convenient to carry out its responsibilities concerning the regulation of the management of hazardous waste components of radioactive waste under the Texas Department of Health's ~~[department's]~~ jurisdiction.

(b) The department ~~[commission]~~ shall consult with the Texas Department of Health ~~[department]~~ concerning regulation and management under this section.

(c) The department ~~[commission]~~ may not adopt rules or engage in management activities under this section that conflict with state or federal laws and rules concerning the regulation of radioactive waste.

SECTION 8. Subsection (a), Section 362.004, Health and Safety Code, is amended to read as follows:

(a) This chapter does not limit the authority of the Texas ~~[Water Commission; the Texas]~~ Department of Natural Resources ~~[Health]~~, or a local government to:

(1) perform a power or duty provided by other law; or

(2) adopt and enforce rules to carry out duties under Chapter 361 (Solid Waste Disposal Act).

SECTION 9. Subdivision (2), Section 363.004, Health and Safety Code, is amended to read as follows:

(2) "Board" means the Texas Department of Natural Resources Board ~~[of Health]~~.

SECTION 10. Subdivision (3), Section 363.004, Health and Safety Code, is amended to read as follows:

(3) "Commissioner" means the executive director of the Texas Department of Natural Resources ~~[commissioner of health]~~.

SECTION 11. Subdivision (4), Section 363.004, Health and Safety Code, is amended to read as follows:

(4) "Department" means the Texas Department of Natural Resources ~~[Health]~~.

SECTION 12. Subsection (c), Section 364.011, Health and Safety Code, is amended to read as follows:

(c) A rule adopted under this section may not authorize an activity, method of operation, or procedure that is prohibited by Chapter 361 (Solid Waste Disposal Act) or by rules of the Texas Department of Natural Resources ~~[Health, the Texas Water Commission, or the board]~~.

SECTION 13. Subsection (b), Section 364.012, Health and Safety Code, is amended to read as follows:

(b) To prohibit the disposal of solid waste in a county, the commissioners court must adopt an ordinance in the general form prescribed for municipal ordinances specifically designating the area of the county in which solid waste disposal is not prohibited. The requirement in this subsection does not apply if the county has adopted solid waste disposal guidelines approved by the Texas Department of Natural Resources ~~[Health]~~.

SECTION 14. Subsection (c), Section 365.012, Health and Safety Code, is amended to read as follows:

(c) It is a defense to prosecution under this section that the disposal occurred:

(1) at a solid waste site permitted by the Texas ~~[Water Commission or the Texas]~~ Department of Natural Resources ~~[Health]~~;

(2) at a solid waste site licensed by a county under Chapter 361 (Solid Waste Disposal Act); or

(3) in a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

SECTION 15. Subsection (e), Section 365.013, Health and Safety Code, is amended to read as follows:

(e) The Texas Department of Natural Resources ~~[Health]~~ shall adopt rules and standards regulating the processing and treating of refuse, garbage, rubbish, or junk dumped, deposited, or left within 300 yards of a public highway. Subsection (c) does not apply if the refuse, garbage, rubbish, or junk is processed and treated in accordance with those rules and standards. A person commits an offense if the person violates a rule adopted under this section.

SECTION 16. Subsection (a), Section 30.004, Water Code, is amended to read as follows:

(a) This chapter is cumulative of other statutes governing the Texas Department of Natural ~~[Health]~~ Resources and ~~the Texas Water Development Board~~ relating to:

- (1) the issuance of bonds;
- (2) the collection, transportation, treatment, or disposal of waste; and
- (3) the design, construction, acquisition, or approval of facilities for these purposes.

SECTION 17. Section 201.002, Agriculture Code, is amended by adding Subdivision (9) to read as follows:

(9) "Agriculture" means cultivating the soil; producing crops for human food, animal feed, planting seed, or fiber; ginning and compressing cotton; storing grain; floriculture; viticulture; horticulture; dairying; raising or keeping livestock or poultry; raising or keeping exotic livestock or fowl; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop rotation procedure.

SECTION 18. Subchapter B, Chapter 201, Agriculture Code, is amended by adding Section 201.0221 to read as follows:

Sec. 201.0221. AGRICULTURAL POLLUTION PREVENTION AND ABATEMENT. (a) The state board shall plan, implement, and manage programs and practices for abating agricultural pollution in cooperation with the agriculture division of the Texas Department of Natural Resources.

(b) Applications for permits subject to Subchapter I, Chapter 421, Health and Safety Code, that pertain to agriculture and agricultural pollution shall be filed with the state board. On filing, the state board shall forward a copy of the application to the agriculture division of the Texas Department of Natural Resources. The state board shall issue, renew, and amend uncontested permits or uncontested permit renewals or uncontested amendments that pertain to agricultural pollution subject to the same requirements as they would be under Chapter 421, Health and Safety Code. Actions of the state board under this section shall be actions of the Texas Department of Natural Resources. The state board shall refer all contested applications or other contested matters to the agriculture division of the Texas Department of Natural Resources for disposition in the same manner as other matters before the department.

(c) The Texas Department of Natural Resources Board shall consult with the state board in administering and enforcing permits, statutes, and rules pertaining to agricultural pollution prevention and abatement.

(d) The state board shall propose and review rules and environmental quality standards pertaining to agricultural pollution.

SECTION 19. Subchapter B, Chapter 201, Agriculture Code, is amended by adding Section 201.0222 to read as follows:

Sec. 201.0222. RESOLUTION OF COMPLAINTS AND VIOLATIONS. (a) All complaints or allegations of violations of permits, statutes, or rules pertaining

to agricultural pollution shall be directed or referred to the state board. The state board shall cause such complaint or allegation to be investigated. On completion of such investigation, the state board shall either determine that no further action is warranted or shall develop and implement a solution to resolve the complaint. Actions of the state board under this section shall be actions of the Texas Department of Natural Resources.

(b) If the complaint is not resolved within 90 days of completion of the investigation, the state board shall refer the complaint to the agriculture division of the Texas Department of Natural Resources for enforcement as provided under Chapter 421, Health and Safety Code.

SECTION 20. Subchapter B, Chapter 201, Agriculture Code, is amended by adding Section 201.0223 to read as follows:

Sec. 201.0223. FEDERAL PROGRAM COORDINATION. The state board as the lead agricultural pollution agency shall participate with the executive director and the agriculture division of the Texas Department of Natural Resources in representing the state in consultations with the United States Environmental Protection Agency and other federal agencies for all agricultural pollution programs, including but not limited to natural resources management pertaining to agriculture and agricultural pollution.

SECTION 21. Subdivision (1), Section 1, Chapter 36, Acts of the 71st Legislature, Regular Session, 1989 (Article 4477-7g, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Department" means the Texas Department of Natural Resources [Health].

SECTION 22. Section 3, Chapter 569, Acts of the 71st Legislature, Regular Session, 1989 (Article 4477-7i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. MEMBERSHIP. The council is composed of 10 [12] members as follows:

- (1) a representative from the governor's office appointed by the governor;
- (2) one member from each house of the legislature, appointed by the presiding officer of the applicable house;
- (3) a representative of the general public appointed by the governor;
- (4) a management representative of the motor carrier industry that is involved with the transportation of hazardous materials appointed by the governor;
- (5) a management representative of the railroad industry appointed by the governor;

(6) a management representative of a company that manufactures or receives hazardous materials appointed by the governor; and

(7) one representative from each of the following state agencies, appointed by the executive director or commissioner of each respective agency:

- (A) the Railroad Commission of Texas;
- (B) the Texas Department of Public Safety; and
- (C) [the Texas Water Commission;
- [(D)] the Texas Department of Natural Resources

[Health; and

[(E) the Texas Air Control Board].

SECTION 23. Section 10, Chapter 569, Acts of the 71st Legislature, Regular Session, 1989 (Article 4477-7i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. RELATIONSHIP TO OTHER LAWS. Except as specifically provided by this Act, this Act does not diminish or limit the authority of the Texas Department of Natural Resources [Health, the Texas Water Commission;] or any

other state agency in performing the functions relating to spills of hazardous materials vested in those agencies by law.

SECTION 24. Chapter 5, Water Code, and Chapter 381, Health and Safety Code, are repealed effective January 1, 1993.

SECTION 25. The Texas Water Commission and the Texas Air Control Board are abolished subject to all the provisions of this Act. The Texas Sunset Act (Chapter 325, Government Code) applies to the abrogation of these agencies to the extent not inconsistent with this Act.

SECTION 26. (a) The Texas Department of Natural Resources is the successor to the Texas Air Control Board and Texas Water Commission and shall carry out those agencies' respective duties, responsibilities, and functions, as provided by law, including acts of this legislature. The rights, powers, and duties delegated by law to the Texas Water Commission and Texas Air Control Board are expressly assigned to the Texas Department of Natural Resources. Any reference in any law or rule to the Texas Air Control Board or Texas Water Commission means the Texas Department of Natural Resources.

(b) The Texas Department of Natural Resources is the successor to the Texas Department of Health for administration and enforcement of laws pertaining to the treatment, handling, storage, and disposal of solid waste and shall carry out such duties, responsibilities, and functions as provided by law, including acts of this legislature. Except as expressly provided by law, the rights, powers, and duties delegated to the Texas Department of Health for solid waste are assigned to the Texas Department of Natural Resources.

SECTION 27. The abrogation of the Texas Water Commission and Texas Air Control Board and the transfer of duties from the Texas Department of Health shall not affect or impair any act done or obligation, right, license, permit, rule, solid waste or air or water quality criterion, standard, or requirement, or penalty accrued or existing under authority of prior law, and such law shall remain in force for the purpose of sustaining any proper action concerning such obligation, right, license, permit, rule, solid waste or air or water quality criterion, standard, or requirement, or penalty. An action or proceeding commenced prior to the effective date of this Act is governed by the law and applicable administrative rules in effect on that date, provided that effective January 1, 1993, any administrative hearings held by the department shall be held under the provisions of this Act. In the event S.B. No. 1099, Acts of the 72nd Legislature, Regular Session, 1991, becomes law, nothing in this Act shall be construed to abrogate any provision of S.B. No. 1099.

SECTION 28. (a) Effective January 1, 1993, all personnel, equipment, data, documents, facilities, and other items of the Texas Water Commission and Texas Air Control Board and those of the Texas Department of Health pertaining to solid waste are transferred to the Texas Department of Natural Resources.

(b) All appropriations to the Texas Water Commission and Texas Air Control Board and those to the Department of Health pertaining to solid waste are automatically transferred to the Texas Department of Natural Resources beginning January 1, 1993.

SECTION 29. Any other state agency not enumerated in Sections 25 through 28 of this Act that has statutory responsibilities for environmental pollution or environmental quality control and that receives a legislative appropriation for these purposes may transfer to the Texas Department of Natural Resources any amount mutually agreed on by both agencies, subject to the approval of the governor.

SECTION 30. The officers and employees of the Texas Department of Health, Texas Water Commission, and Texas Air Control Board shall cooperate fully with the reorganization.

SECTION 31. The governor shall appoint all members of the Texas Water Commission serving on January 1, 1993, to the Texas Department of Natural

Resources Board. The governor shall appoint three members of the Texas Air Control Board serving on January 1, 1993 to the Department of Natural Resources Board. The governor shall at the time of appointment designate two members to serve terms expiring February 1, 1995, two appointees to serve terms expiring February 1, 1997, and two members to serve terms expiring February 1, 1999. Appointments under this section are subject to the advice and consent of the senate and must satisfy all qualifications for appointment to the Texas Department of Natural Resources Board.

SECTION 32. Prior to September 1, 1993, the governor shall appoint a public counsel. Within 60 days of taking office under this Act, the Texas Department of Natural Resources Board shall appoint an executive director of the department and the chief administrative law judge. Within 90 days of appointment, the executive director shall submit to the board an initial plan of organization of the department. The board shall have approved a final organizational plan by March 1, 1993. The executive director shall have implemented the final plan by September 1, 1993. In organizing the department, the board and the executive director shall seek to eliminate overlapping authority and duplication of effort and resources among the functions of the department currently performed by the Texas Water Commission, Texas Air Control Board, and Texas Department of Health. The department shall report the status of implementation of the organizational plan to the governor and the 73rd Legislature.

SECTION 33. The State Purchasing and General Services Commission shall to the greatest extent possible locate the offices of the Texas Department of Natural Resources in a single, centralized location, taking into account the expiration dates or cancellation clauses of current leases entered into for offices of the agencies abolished and consolidated by this Act. The State Purchasing and General Services Commission may not enter into new leases or extend existing leases for a term beyond January 1, 1993, for the Texas Water Commission or Texas Air Control Board.

SECTION 34. (a) In the event S.B. No. 884, 72nd Legislature, Regular Session, 1991, becomes law on or before the effective date of this Act:

(1) Subsection (a), Section 421.171 and Sections 421.172, 421.173, and 421.174, Health and Safety Code, have no effect;

(2) the powers granted to the office of hearings under Subchapter H, Chapter 421, Health and Safety Code, shall be exercised by the agency created by S.B. No. 884, Acts of the 72nd Legislature, Regular Session, 1991;

(3) the powers granted to and the responsibilities of the chief administrative law judge and the chief clerk under Subchapter H, Chapter 421, Health and Safety Code, shall be exercised by the appropriate corresponding officer of the agency created by S.B. No. 884, Acts of the 72nd Legislature, Regular Session, 1991; and

(4) all matters of jurisdiction, review by the board of decisions, and procedure and law in a hearing involving the board shall be the same in a hearing before the agency created by S.B. No. 884, Acts of the 72nd Legislature, Regular Session, 1991, as they would have been before the office of hearings. All references to the office of hearings, chief administrative law judge, and chief clerk shall be read as references to the appropriate corresponding employee of the agency created by S.B. No. 884, Acts of the 72nd Legislature, Regular Session, 1991.

(b) The provisions of this section and Chapter 421, Health and Safety Code, control the procedure, law applied, and conduct of a hearing involving the department to the extent of a conflict with S.B. No. 884, Acts of the 72nd Legislature, Regular Session, 1991.

SECTION 35. (a) There shall be established an Environmental Policy Commission. The governor shall appoint five members of the commission and shall

designate a chair. The lieutenant governor and the speaker of the House of Representatives shall each appoint five members, at least two of whom shall be members of the respective house of the appointing officer. In appointing members to the commission, the appointing officers shall provide for balanced representation of environmental and public interest groups and the regulated community.

(b) The commission shall review and make recommendations regarding the environmental protection policies and goals of the state. A report shall be submitted by the commission to the governor and presiding officer of both houses of the legislature by December 1, 1992. The commission shall specifically consider and make recommendations regarding:

(1) the desirability and feasibility of consolidating within the Texas Department of Natural Resources all or part of additional state agencies administering environmental protection programs or enforcing environmental protection laws;

(2) the process of granting and reviewing applications for permits having an environmental impact, with regard to coordinating programs to protect different environmental media;

(3) statutory or policy changes necessary to coordinate state environmental protection efforts with those of the federal government to ensure delegation to the state of federal regulatory and enforcement authority and to maximize federal funding for state environmental programs;

(4) reducing environmental pollution at its source;

(5) maximizing public participation in the environmental protection process;

(6) encouraging voluntary action by industry to reduce the need for regulatory action;

(7) improving environmental research and information sharing; and

(8) any other improvement or recommendation which the commission shall see fit to adopt.

(c) On request of the commission, any agency shall assist the commission in performing its duties. This section expires January 1, 1993.

SECTION 36. Sections 30, 33, and 35 of this Act take effect September 1, 1991. Section 2 of this Act takes effect according to its terms. All other sections of this Act take effect January 1, 1993.

SECTION 37. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

Senator Parker offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 2**

Amend Floor Amendment No. 1 to C.S.S.B. 35, SECTION 31, by deleting the first two sentences of the section and substituting in lieu thereof the following: "The governor shall appoint the members of the board of the Texas Department of Natural Resources by January 1, 1993.

The amendment to the amendment was read and was adopted by the following vote: Yeas 23, Nays 7.

Yeas: Armbrister, Barrientos, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Johnson, Leedom, Lucio, Moncrief, Parker, Rosson, Sims, Tejada, Truan, Turner, Whitmire, Zaffirini.

Nays: Bivins, Harris of Dallas, Henderson, Krier, Montford, Ratliff, Sibley.

Absent-excused: Lyon.

Senator Glasgow offered the following amendment to Floor Amendment No.

1:

**Floor Amendment No. 3**

Amend Floor Amendment No. 1 to C.S.S.B. 35 as follows:

(1) Amend SECTION 20, Section 201.0223, by adding the following to the end of the section:

Nothing in this chapter is intended to affect the existing authority of the Texas Department of Agriculture pursuant to the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.).

(2) Add a new SECTION 35 to read as follows:

SECTION 35. Nothing in this Act shall be construed to change the existing authority of the Texas Department of Agriculture under Subtitle B or G, Title 5, Agriculture Code.

(3) Renumber the subsequent sections accordingly.

The amendment to the amendment was read and was adopted by a viva voce vote.

Senator Barrientos offered the following amendment to Floor Amendment No.

1:

**Floor Amendment No. 4**

Amend Floor Amendment No. 1 to C.S.S.B. 35 by adding new Sections 10 and 11 and renumbering subsequent sections.

SECTION 10. Section 382.052, Health and Safety Code, is amended to read as follows:

Sec. 382.052. PERMIT TO CONSTRUCT OR MODIFY FACILITY WITHIN 3,000 FEET OF DAY-CARE CENTER OR SCHOOL. (a) Except as provided by Subsection (b), the board may not grant [In considering the issuance of] a permit to construct [or modify] a facility that emits or will emit air contaminants or nuisance odors with adverse short-term or long-term side effects on human health within 3,000 feet of a day-care center, prekindergarten, kindergarten, or [an] elementary, junior high, or senior high school [; the board shall consider possible adverse short-term or long-term side effects of air contaminants or nuisance odors from the facility on the individuals attending the school facilities].

(b) The board may grant a permit to modify an existing facility that emits or will emit air contaminants or nuisance odors with adverse short-term or long-term side effects on human health within 3,000 feet of a day-care center, prekindergarten, kindergarten, or elementary, junior high, or senior high school if the modification will result in a substantial reduction in emissions of those contaminants or nuisance odors.

(c) In this section, "day care center" has the meaning assigned by Section 42.002, Human Resources Code.

SECTION 11. (a) The change in law made by Section 382.052, applies only to an application for a permit that is:

(1) pending before the Texas Air Control Board on the effective date of this Act; or



(2) submitted to the Texas Air Control Board on or after that date.

The amendment to the amendment was read.

Senator Glasgow moved to table the amendment to the amendment.

On motion of Senator Glasgow and by unanimous consent, the motion to table the amendment to Floor Amendment No. 1 was withdrawn.

On motion of Senator Barrientos and by unanimous consent, the amendment to the amendment was withdrawn.

Senator Bivins offered the following amendment to Floor Amendment No. 1:  
**Floor Amendment No. 5**

Amend page 18, line 10 of Floor Amendment No. 1 to C.S.S.B. 35 by striking the following:

“to and involvement in efforts”

The amendment to the amendment was read and was adopted by a viva voce vote.

Senator Brooks offered the following amendment to Floor Amendment No. 1:  
**Floor Amendment No. 6**

Amend Floor Amendment No. 1 to C.S.S.B. 35 as follows:

(1) Insert before line 3, page 1, “Article I. Texas Department of Natural Resources”;

(2) In SECTION 2, page 27, line 14 strike the word “Act” and insert in lieu thereof the word “article”;

(3) In SECTION 25, page 36, lines 7, 8, and 10 strike the words “this Act” and insert in lieu thereof the words “this article”;

(4) In SECTION 27, page 37, lines 10 and 13 strike the word “Act” and insert in lieu thereof the word “article”;

(5) In SECTION 29, page 37, line 27 strike the word “Act” and insert in lieu thereof the word “article”;

(6) In SECTION 32, page 38, line 20 strike the word “Act” and insert in lieu thereof the word “article”;

(7) In SECTION 33, page 39, line 9 strike the word “Act” and insert in lieu thereof the word “article”;

(8) In SECTION 34, page 39, line 15 strike the word “Act” and insert in lieu thereof the word “article”;

(9) In SECTION 36, page 41, lines 21, 22, and 23 strike the word “Act” and insert in lieu thereof the word “article”;

(10) Add the following Article II after SECTION 36 and insert the title “Article III. Miscellaneous” before SECTION 37:

#### ARTICLE II. AIR QUALITY REGULATION

SECTION 1. Section 382.003, Health and Safety Code, as amended by S.B. No. 404, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 382.003. DEFINITIONS. In this chapter:

(1) "Administrator" means the administrator of the United States Environmental Protection Agency.

(2) "Air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.

(3) [(2)] "Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:

(A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or

(B) interfere with the normal use or [and] enjoyment of animal life, vegetation, or property.

(4) [(3)] "Board" means the Texas Air Control Board.

(5) [(4)] "Executive director" means the executive director of the board.

(6) [(5)] "Facility" means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility.

(7) "Federal source" means a facility, group of facilities, or other source that is subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) and includes:

(A) an affected source as defined by Section 402, Title IV, of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(B) a major source as defined by Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(C) a major source as defined by Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(D) a source subject to the standards or regulations under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. Sections 7411 and 7412);

(E) a source required to have a permit under Part C or D of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470 et seq. and 7501 et seq.);

(F) a major stationary source or major emitting facility under Section 302 of the federal Clean Air Act (42 U.S.C. Section 7602); and

(G) any other stationary source in a category designated by the United States Environmental Protection Agency as subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

(8) [(6)] "Local government" means a health district established under Chapter 121, a county, or a municipality.

(9) [(7)] "Modification of existing facility" means any physical change in, or change in the method of operation of, a stationary source in a manner that increases the amount of any air pollutant emitted by the source into the atmosphere or that results in the emission of any air pollutant not previously emitted.

(A) The term does not include:

(i) [(A)] insignificant increases in the amount of any air pollutant emitted that is authorized by one or more board exemptions;

(ii) insignificant increases at a permitted facility; or

(iii) ~~[(B)]~~ maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere.

(B) For purposes of determining whether there is an increase in any air pollutant emitted, the board shall not consider the effect on emissions of:

(i) any air pollution control method applied to a source; or

(ii) any decreases in emissions from other sources.

(10) ~~[(8)]~~ "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(11) ~~[(9)]~~ "Select-use technology" means a technology that involves simultaneous combustion of natural gas with other fuels in fossil fuel-fired boilers. The term includes cofiring, gas reburn, and enhanced gas reburn/sorbent injection.

(12) ~~[(10)]~~ "Source" means a point of origin of air contaminants, whether privately or publicly owned or operated.

(13) "Well test" means the testing of an oil or gas well for a period of time that is less than 72 hours, provided such testing shall not constitute a major source or major modification under any provision of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

SECTION 2. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0172 to read as follows:

Sec. 382.0172. INTERNATIONAL BORDER AREAS. In order to qualify for the exceptions provided by Section 179B of the federal Clean Air Act (42 U.S.C. Section 7509a), as added by Section 818 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), the board shall, in developing rules and control programs to be included in an implementation plan for an international border area, ensure that such plan or revision:

(1) meets all of the requirements applicable to it under Title I of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of Title I or in a regulation promulgated under such provision; and

(2) would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of Title I, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States.

SECTION 3. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0205 to read as follows:

Sec. 382.0205. SPECIAL PROBLEMS RELATED TO AIR CONTAMINANT EMISSIONS. Consistent with applicable federal law, the board by rule may control air contaminants as necessary to protect against adverse effects related to:

(1) acid deposition;

(2) stratospheric changes, including depletion of ozone; and

(3) climatic changes, including global warming.

SECTION 4. Subchapter B, Chapter 382, Health and Safety Code, is amended by amending Section 382.031(a) and (c) to read as follows:

(a) Notice of a hearing under this chapter shall be published at least once in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or the municipality nearest to the location or proposed

location of the facility [regularly published or with general circulation in each county in which, because of the county's geographic relation to the subject matter of the hearing, the board has reason to believe persons reside who may be affected by any action taken as a result of the hearing]. The notice must be published not less than 30 [20] days before the date set for the hearing.

(b) Notice of the hearing must describe briefly and in summary form the purpose of the hearing and the date, time, and place of the hearing.

(c) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed to the person at the person's most recent address known to the board not less than 30 [20] days before the date set for the hearing. If the party is not an individual, the notice may be given to an officer, agent, or legal representative of the party.

(d) The hearing body shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing new notice. If the hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the hearing body at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed by Subsection (c) at a reasonable time before the new setting, but is not necessary to publish a newspaper notice of the new setting. In this Subsection, "hearing body" means the individual or individuals that hold a hearing under this Section.

(e) This Section applies to all hearings held under this chapter except as otherwise specified by Sections 382.017, 382.026, or 382.063.

SECTION 5. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0365 to read as follows:

Sec. 382.0365. SMALL BUSINESS STATIONARY SOURCE ASSISTANCE PROGRAM. (a) The board shall establish a small business stationary source technical and environmental compliance assistance program.

(b) The program shall include:

(1) mechanisms to develop, collect, and coordinate information about compliance methods and technologies for small business stationary sources and to encourage cooperation between those sources and other persons to achieve compliance with applicable air quality laws;

(2) mechanisms to assist small business stationary sources with pollution prevention and the prevention and detection of accidental releases, including information about alternative technologies, process changes, products, and methods of operation to reduce air pollution;

(3) an ombudsman to help small business stationary sources meet the requirements of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(4) a compliance assistance program to help small business stationary sources identify the requirements for and obtain required permits in a timely and efficient manner;

(5) notification procedures to assure that small business stationary sources receive notice of their rights and obligations under the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) in time to identify applicable requirements and evaluate and implement appropriate compliance methods;

(6) auditing services or referrals for small business stationary source operations to determine compliance with the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549); and

(7) procedures for considering a request by a small business stationary source to modify work practices, technological compliance methods, or an

implementation schedule requirement that precedes a compliance date, taking into account the technological and financial capability of that source.

(c) The program shall include a compliance advisory panel that consists of the following seven members:

(1) two members who are not owners or representatives of owners of small business stationary sources, selected by the governor to represent the public;

(2) two members who are owners or who represent owners of small business stationary sources, selected by the speaker of the house of representatives;

(3) two members who are owners or who represent owners of small business stationary sources, selected by the lieutenant governor; and

(4) one member selected by the chairman of the board to represent that agency.

(d) The compliance advisory panel shall:

(1) give advisory opinions on the effectiveness of the program, the difficulties of implementing the program, and the incidence and severity of enforcement;

(2) report periodically to the administrator regarding the program's compliance with requirements of the Paperwork Reduction Act of 1980 (Pub. L. No. 96-511), the Regulatory Flexibility Act (5 U.S.C. Section 601 et seq.), and the Equal Access to Justice Act (Pub. L. No. 96-481);

(3) review information the program provides to small business stationary sources to assure the information is understandable to nonexperts; and

(4) distribute opinions, reports, and information developed by the panel.

(e) The board shall enter into a memorandum of understanding with the Texas Department of Commerce to coordinate assistance to any small business in applying for permits from the board.

(f) The board may adopt rules reasonably necessary to implement this section in compliance with Section 507 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) and regulations adopted under that Act.

(g) In this section:

(1) "Program" means the small business stationary source technical and environmental compliance assistance program.

(2) "Small business stationary source" has the meaning assigned by Section 507(c) of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

SECTION 6. Section 382.051, Health and Safety Code, is amended to read as follows:

Sec. 382.051. PERMITTING AUTHORITY OF BOARD  
~~[CONSTRUCTION PERMIT]~~. (a) The board may issue a permit:

(1) to construct a new facility or modify an existing facility that may emit air contaminants; or

(2) to operate a federal source [Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a construction permit from the board].

(b) The board may issue:

(1) special permits for certain facilities;

(2) a general permit for numerous similar sources; or

(3) a single permit for multiple facilities located at the same site. When multiple facilities are consolidated into a single permit pursuant to this subsection and such a consolidated permit is reopened with regard to consideration of an amendment relating to one or more facilities authorized by that permit, the permit shall not be deemed reopened with respect to facilities for which an amendment,

revision, or modification is not sought unless another provision of this Act specifically authorizes or requires such additional reopening in order to protect the public's health and physical property.

(c) The board may issue a federal operating permit for a source in violation only if the operating permit incorporates a compliance plan for the source, as required by Section 503 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) and any rules adopted by the board, as a condition of the permit.

(d) The board shall adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter.

(e) The board shall determine when an application filed pursuant to Section 382.054 or Section 382.0515 is administratively complete. On such determination, the board shall notify by mail the applicant and any interested party who has requested notification. If it is impracticable for the board to notify by mail the interested parties who have requested notification because of the number of the parties, the board shall notify those interested parties by publication using the method prescribed in Section 382.031(a). [A person applying for a construction permit or special permit shall submit to the board:

[(1) a permit application;

[(2) copies of all plans and specifications necessary to determine if the proposed construction will comply with applicable air control standards and the intent of this chapter; and

[(3) any other information the board considers necessary.

[(d) The board shall grant within a reasonable time a permit to construct or modify a facility if from the information available to the board or from information presented at a hearing, if a hearing is held under Section 382.056(d), the board finds:

[(1) the proposed facility for which a permit or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

[(2) no indication that the emissions from the proposed facility will contravene the intent of this chapter, including protection of the public's health and physical property.

[(e) If the board finds that the emissions from the proposed facility will contravene the standards under Subsection (d) or will contravene the intent of this chapter, the board may not grant the permit or a special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

[(f) If the person applying for a permit or a special permit makes the alterations in the person's plans and specifications to meet the board's specific objections, the board shall grant the permit or a special permit. If the person fails or refuses to alter the plans and specifications, the board may not grant the permit or special permit. The board may refuse to accept a person's new application until board objections to the plans previously submitted by that person are rectified.

[(g) This section does not apply to a person who has executed a contract or begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971. To qualify for an exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972.]

SECTION 7. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0511 through 382.0515 to read as follows:

Sec. 382.0511. PERMIT CONSOLIDATION AND AMENDMENT. (a) The board may consolidate into a single permit:

(1) any permits, special permits, or exemptions for a facility or source issued by the board before September 1, 1991; or

(2) any permit issued by the board on or after September 1, 1991, with any permits, special permits, or exemptions issued or qualified for by that date.

(b) Consistent with the rules adopted pursuant to Subsection (d) and the limitations of this Act, including limitations that apply to the modification of an existing facility, the board may amend, revise, or modify a permit.

(c) The board may also allow changes within a permitted facility or a facility which has filed a timely and complete application for a federal operating permit under Section 382.054 without requiring a permit revision, if the changes are not modifications under any provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), the changes do not cause an exceedance of the emissions allowable under the permit, and the changes do not alter any permit condition, provided that the facility provides the board with written notification at least seven days in advance of the proposed changes, unless the board provides in its regulations a different time frame for emergencies.

(d) The board by rule shall develop criteria and administrative procedures to implement Subsections (b) and (c).

Sec. 382.0512. PERMIT CONDITIONS. The board shall have authority to establish and enforce permit conditions consistent with this chapter and rules adopted by the board.

Sec. 382.0513. SAMPLING AND MONITORING. The board may require, at the expense of the permit holder and as a condition of the permit:

(1) sampling and monitoring of a permitted source or facility; and

(2) a regular periodic report of sampling and monitoring results.

Sec. 382.0514. APPLICATION FOR PERMIT. A person applying for a permit shall submit to the board:

(1) a permit application;

(2) copies of all plans and specifications necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of this chapter; and

(3) any other information the board considers necessary.

Sec. 382.0515. PRECONSTRUCTION PERMIT. (a) Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit from the board.

(b) The board shall grant within a reasonable time a permit to construct or modify a facility if, from the information available to the board, including information presented at any hearing held under Section 382.056(d), the board finds:

(1) the proposed facility for which a permit or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(c) In considering the issuance, amendment, or renewal of a permit, the board may consider any adjudicated decision on or compliance proceeding within the five years prior to the filing of the application addressing past performance and compliance of the applicant with the laws of this state, another state, or the United States governing air contaminants and with the terms of any permit or order issued by the board.

(d) If the board finds that the emissions from the proposed facility will contravene the standards under Subsection (b) or will contravene the intent of this chapter, the board may not grant the permit or a special permit and shall set out

in a report to the applicant its specific objections to the submitted plans of the proposed facility.

(e) If the person applying for a permit or a special permit makes the alterations in the person's plans and specifications to meet the board's specific objections, the board shall grant the permit or special permit. If the person fails or refuses to alter the plans and specifications, the board may not grant the permit or special permit. The board may refuse to accept a person's new application until the board's objections to the plans previously submitted by that person are satisfied.

(f) A person may operate a facility or source under a permit issued by the board under this section if:

(1) the facility or source is not required to obtain a federal operating permit under Section 382.054; and

(2) within the time and in the manner prescribed by board rule, the permit holder demonstrates that:

(A) the facility complies with all terms of the existing preconstruction permit; and

(B) operation of the facility or source will not violate the intent of this chapter or standards adopted by the board.

(g) Subsections (a) through (d) do not apply to a person who has executed a contract or begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971. To qualify for any exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972.

SECTION 8. Section 382.054, Health and Safety Code, is amended to read as follows:

Sec. 382.054. FEDERAL OPERATING PERMIT. A person may not operate a federal source unless the person has obtained a federal operating permit from the board under Sections 382.0541 and 382.0542. [(a) The person in charge of a facility for which a construction permit has been issued shall apply for an operating permit not later than the 60th day after the date on which the facility begins operation. The board may require the submission of monitoring data to demonstrate compliance with applicable rules and with this chapter in support of an operating permit application. If start-up or testing requires more than 60 days, the board may extend the 60-day period.

[(b) The board shall issue the operating permit within a reasonable time if:

[(1) all stipulations of the construction permit are met, and

[(2) the operation of the facility will not contravene the intent of this chapter or air pollution control standards set by the board.

[(c) If the board determines that the operation of the facility will contravene the intent of this chapter or air pollution control standards set by the board, the board may not grant the operating permit and shall set out in a report to the applicant the specific objections that the board finds to the facility:

[(d) The board may not accept a new application from a person for an operating permit for a facility until the previous objections submitted by the board concerning that facility are rectified.]

SECTION 9. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0541 and 382.0542 to read as follows:

Sec. 382.0541. ADMINISTRATION AND ENFORCEMENT OF FEDERAL OPERATING PERMIT. (a) The board may:

(1) require a federal source subject to Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) to comply with that Act and regulations adopted under that Act;

(2) require an existing facility or source to use at a minimum, any applicable maximum achievable control technology required by the board or by the United States Environmental Protection Agency;



(3) require a new or modified facility or source, subject to Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) to use, at a minimum, the more stringent of:

(A) best available control technology considering the technical practicability and economic reasonableness of reducing or eliminating emissions from the proposed facility or source; or

(B) any applicable maximum achievable control technology required by the board or by the United States Environmental Protection Agency;

(4) establish maximum achievable control technology requirements on a case-by-case basis if the United States Environmental Protection Agency does not adopt those requirements;

(5) issue five-year permits for federal sources under Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(6) administer the use of emissions allowances under Section 408 of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(7) reopen and revise an affected federal permit with a term of three years or more remaining in order to incorporate requirements under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) adopted after the permit is issued; and

(8) incorporate a federal implementation plan as a condition of a permit issued by the board.

(b) The board by rule shall provide for objection by the administrator to the issuance of any operating or general permit subject to Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) and shall authorize the administrator to revoke and reissue or terminate or modify a permit.

(c) This section does not affect the permit requirements of Section 382.0515, except that the board may consolidate with an existing permit issued under this section a permit required by Section 382.0515.

(d) Nothing in Subsection (a)(3) shall be construed to prohibit the applicability of at least best available control technology to a new or modified facility or source under Section 382.0515(b)(1).

Sec. 382.0542. ISSUANCE OF FEDERAL OPERATING PERMIT; APPEAL OF DELAY. (a) The board shall grant a permit required by Section 382.054 not later than 18 months after the date on which the board receives an administratively complete application if, from information available to the board, including information presented at any hearing held under Section 382.0561, the board finds that the facility or source for which the permit is sought meets the requirements of Subsection (b).

(b) A facility or source is eligible for a permit required by Section 382.054 if:

(1) emissions from the facility or source will comply with the intent of this chapter, including protection of the public's health and physical property;

(2) the facility or source will use, at a minimum, any applicable maximum achievable control technology required by the board or by the United States Environmental Protection Agency;

(3) for a new or modified source or facility, subject to Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), the source or facility will use, at a minimum, the more stringent of:

(A) the best available control technology considering the technical practicability and economic reasonableness of reducing or eliminating the emissions from the proposed facility or source; or

(B) any applicable maximum achievable control technology required by the board or by the United States Environmental Protection Agency; and

(4) emissions from the facility or source will comply with all applicable requirements of:

(A) Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(B) Title IV of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549);

(C) Sections 111 and 112 of the federal Clean Air Act (42 U.S.C. Sections 7411 and 7412);

(D) Parts C and D of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470 et seq. and 7501 et seq.);

(E) the state implementation plan requirements approved by the United States Environmental Protection Agency;

(F) this chapter and rules adopted under this chapter;

and

(G) the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) as revised.

(c) If the board does not act on a permit application or permit renewal application within 18 months of the date on which the board received an administratively complete application, a person affected by the board's failure to act may obtain judicial review under Section 382.032. A reviewing court may order the board to act on the application without additional delay if it finds that the board's failure to act is arbitrary or unreasonable.

(d) In considering the issuance, amendment, or renewal of a permit, the board may consider any adjudicated decision or compliance proceeding within the five years prior to the filing of the application addressing past performance and compliance of the applicant with the laws of this state, another state, or the United States governing air contaminants and with the terms of any permit or order issued by the board.

(e) Nothing in Subsection (b)(3) shall be construed to prohibit the applicability of at least best available control technology to a new or modified facility or source under Section 382.0515(b)(1).

SECTION 10. Section 382.055, Health and Safety Code, is amended to read as follows:

Sec. 382.055. REVIEW AND RENEWAL OF [OPERATING] PERMIT. (a) A permit issued or renewed by the board on or after September 1, 1991, [An operating permit] is subject to review every five [15] years after the date of issuance to determine whether the authority to operate should be renewed. A permit issued before September 1, 1991, is subject to review 15 years after the date of issuance.

(b) The board by rule shall establish:

(1) a deadline by which the holder of a [an operating] permit must submit an application for review of the permit;

(2) the general requirements that must be met by the applicant; and

(3) the procedures for reviewing and acting on review applications.

(c) No less than 180 days before [the expiration of the 15th year after] the date on which a [an operating] permit expires [is issued or continued under this chapter], the board shall provide written notice to the permit holder, by registered or certified mail, that the permit is scheduled for review in accordance with this section. The notice must include a description of the procedure for filing a review application and the information to be included in the application.

(d) In determining whether and under which conditions a [an operating] permit should be renewed [continued], the board shall consider, at a minimum:

(1) whether the facility is or has been in substantial compliance with this chapter and the terms of the existing permit; [and]

(2) the condition and effectiveness of existing emission control equipment and practices; and

(3) all applicable requirements of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

(e) The board shall impose as a condition for renewal ~~[continuance]~~ of a ~~[an operating]~~ permit any applicable requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), as well as those requirements determined to be economically reasonable and technically practicable, considering the age of the facility and the effect of its emissions on the surrounding area. The ~~[During the review, the]~~ board may not impose requirements less stringent than those of the existing permit unless the board determines that a proposed change will meet the requirements of Sections 382.0515 and 382.0541 ~~[Section 382.051]~~.

(f) No later than 180 days after the date on which the review application is filed, the board shall renew ~~[continue]~~ the permit or, if the board determines that the facility will not meet the requirements for renewing ~~[continuing]~~ the ~~[operating]~~ permit, shall:

(1) set out in a report to the applicant the basis for the board's determination; and

(2) establish a schedule, to which the applicant must adhere in meeting the board's requirements, that:

(A) includes a final date for meeting the board's requirements; and

(B) requires completion of that action as expeditiously as possible.

(g) If the applicant meets the board's requirements in accordance with the schedule, the board shall renew ~~[continue]~~ the permit. If the applicant does not meet those requirements in accordance with the schedule, the applicant must show in a contested case proceeding why the permit should not expire immediately. The applicant's ~~[operating]~~ permit is effective until:

(1) the final date specified by the board's report to the applicant;

(2) the existing permit is renewed ~~[continued]~~; or

(3) the date specified by a board order issued following a contested case proceeding held under this section.

(h) If the holder of a ~~[an operating]~~ permit to whom the board has mailed notice of this section does not apply for review of that permit by the date specified by the board under this section:

(1) ~~a~~ ~~[the]~~ permit issued on or after September 1, 1991, expires five ~~[15]~~ years after the date on which the permit is originally issued or, if the permit has been renewed ~~[continued]~~, five years after the date on which the permit is last renewed; and

(2) a permit issued before September 1, 1991, expires 15 years after the date on which the permit is originally issued or, if the permit has been renewed before September 1, 1991, 15 years after the date on which the permit was renewed ~~[continued]~~.

(i) This section does not affect the board's authority to begin enforcement action under Sections 382.082-382.084.

SECTION 11. Subsections (a) and (d), Section 382.056, Health and Safety Code, are amended to read as follows:

(a) An applicant for a ~~[construction]~~ permit ~~[or special permit]~~ under Section 382.0515 or 382.054 ~~[382.051]~~ or a permit renewal review under Section 382.055 shall publish notice of intent to obtain the permit or permit review. The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality ~~[county]~~ in which the facility is located or is proposed to be located or the municipality nearest to the location or proposed location of the facility. The

board by rule shall prescribe when notice must be published and may require publication of additional notice.

(d) Except as provided by Section 382.0561, the [The] board or its delegate shall hold a public hearing on the permit application or permit review application before granting the permit or renewal [continuance] if a person who may be affected by the emissions, or a member of the legislature from the general area in which the facility or proposed facility is located, requests a hearing within the period set by board rule. The board is not required to hold a hearing if the basis of a request by a person who may be affected is determined to be unreasonable.

SECTION 12. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0561 through 382.0564 to read as follows:

Sec. 382.0561. FEDERAL OPERATING PERMIT; HEARING. (a) The following public hearings shall be conducted under the requirements of this section only and not those of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes):

(1) a public hearing on a permit application for a federal operating permit under Sections 382.054-382.0542 and not subject to Section 382.0515; or

(2) a public hearing on an application for renewal of a federal operating permit under Section 382.055.

(b) On the determination that an application for a permit pursuant to Sections 382.054-382.0542 and a renewal of such permit pursuant to Section 382.055 is administratively complete and prior to the beginning of the public comment period, the board shall prepare a draft permit.

(c) The board or its designee shall hold a public hearing on the permit application before granting the permit if a person who may be affected by the emissions or a member of the legislature from the general area in which the facility is located requests a hearing within the public comment period. The board is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable.

(d) Information submitted by the application, subject to appropriate confidential information protection, the executive director's analysis of the proposed action, and a copy of the draft permit shall be available for public inspection in at least one location in the general area where the facility is located.

(e) The board shall hold a public comment period on a permit application or permit renewal application under Sections 382.054-382.0542 and 382.055. Any person may submit a written statement to the board during the public comment period. Public comment shall be received by the executive director for 30 days after notice of the public comment period is published. The executive director may extend or reopen the comment period if the director finds an extension or reopening to be appropriate.

(f) Notice of the public comment period and opportunity for a hearing under this section shall be published in accordance with Section 382.056.

(g) Any person may submit an oral or written statement concerning the application at the hearing. The individual holding the hearing may set reasonable limits on the time allowed for oral statements at the hearing. The public comment period extends to the close of the hearing and may be further extended or reopened if the executive director finds an extension or reopening to be appropriate.

(h) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the executive director's preliminary decision to issue or deny a permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period. The requirements of this subsection shall not apply to appeals to the board under Section 382.0563.

(i) The executive director shall consider all comments received during the public comment period and at the public hearing in determining whether to issue the permit and what conditions should be included if a permit is issued.

Sec. 382.0562. NOTICE OF DECISION. (a) The executive director shall send notice of a decision on a federal operating permit by first-class mail to the applicant and all persons who comment during the public comment period or at the public hearing. The notice shall include a response to any comment submitted during the public comment period and shall identify any change in the conditions of the draft permit and the reasons for the change.

(b) The notices required in Subsection (a) shall state that any person affected by the decision of the executive director has 30 days from the date the decision was mailed to appeal the decision to the board. The notice shall state the date by which an appeal must be filed. The notice shall explain the appeal process and shall explain that an appeal is a contested case hearing before the board. The notice shall provide that a letter to the board stating that the person is appealing the decision shall constitute an appeal of the decision.

Sec. 382.0563. APPEAL TO BOARD. (a) Any person, including the applicant, affected by a decision of the executive director under Section 382.0561 may appeal the decision to the board not later than the 30th day after the date on which the executive director certifies that notice of the decision was posted. The issues on appeal must be identified with specificity in the request for a contested case hearing.

(b) An appeal under this section is a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) The filing of an appeal to the board under this section does not affect a permit issued by the executive director. A final order by the board reversing or modifying the executive director's decision takes effect when it becomes final and appealable.

Sec. 382.0564. NOTIFICATION TO OTHER GOVERNMENTAL ENTITIES. The board by rule shall allow for notification of and review by the administrator and affected states of any permit application or draft permits prepared pursuant to Sections 382.054-382.0542 in accordance with the requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), should such notification and review be requested.

SECTION 13. Section 382.057, Health and Safety Code, is amended to read as follows:

Sec. 382.057. EXEMPTION. (a) Consistent with Section 382.0511, the [The] board by rule may exempt from the requirements of Section 382.0515 [Sections 382.051-382.055] and Sections 382.054-382.0542 changes within a permitted facility and [Section 382.060] certain types of facilities if it is found on investigation that such changes [facilities] or types of facilities will not make a significant contribution of air contaminants to the atmosphere, except as prohibited by the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549). The board shall not exempt any source or facility or any modification of an existing facility defined as "major" under the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) or regulations promulgated thereunder.

(b) The board shall promulgate rules specifically defining the terms and conditions for exemptions in nonattainment areas as defined by Title I of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

SECTION 14. Section 382.059, Health and Safety Code, is amended to read as follows:

Sec. 382.059. REVOCATION OF PERMIT OR EXEMPTION. (a) The board may revoke and reissue or terminate or modify a permit or exemption issued under this chapter if the board determines that:

(1) any of the terms of the permit or exemption are being violated; or  
 (2) emissions from the proposed facility will contravene air pollution control standards set by the board or will contravene the intent of this chapter.

(b) The board may:

(1) begin proceedings to revoke and reissue or terminate or modify a permit if a violation at a [proposed] facility is continued after 180 days following the date on which the notice of violation is provided under Section 382.082; and

(2) consider good faith efforts to correct the violation in deciding whether to revoke and reissue or terminate or modify a permit or exemption.

SECTION 15. Section 382.060, Health and Safety Code, is repealed.

SECTION 16. Section 382.061, Health and Safety Code, is amended to read as follows:

Sec. 382.061. DELEGATION OF POWERS AND DUTIES. The board may delegate to the executive director the powers and duties under Sections 382.051-382.055, 382.057, and 382.059[~~and 382.060~~]. An applicant or a person affected by a decision of the executive director may appeal to the board any decision made by the executive director under those sections.

SECTION 17. Section 361.071, Health and Safety Code, is amended to read as follows:

Sec. 361.071. PERMIT FROM OTHER AGENCIES. The owner or operator of a hazardous waste or solid waste management facility is not required to obtain a permit from any agency of the state other than the department or commission to store, process, treat, dispose of, or destroy solid waste or hazardous waste unless:

(1) a permit is required under Title IV or V [~~the new source review requirements of Part C or D, Title I,~~] of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) [(42 U.S.C. Section 7401 et seq.) for a major source or major modification]; or

(2) a permit is required by the Railroad Commission of Texas under Chapter 27, Water Code.

SECTION 18. Section 382.062, Health and Safety Code, is amended to read as follows:

Sec. 382.062. APPLICATION AND INSPECTION FEES. (a) The board shall adopt, charge, and collect a fee for:

(1) each application for:

(A) a permit, permit amendment, [or] revision, or modification not subject to Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) [special permit submitted under Section 382.051];

(B) a [~~registration submitted under Section 382.060;~~

and

[(C)-a] permit renewal review of a permit issued under Section 382.0515 not subject to Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) [382.055]; [and]

(2) inspections of facilities or sources performed to enforce this chapter or rules adopted by the board under this chapter until such time as the facilities or sources are required to obtain a Title IV or V operating permit under the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549); and

(3) inspections performed to enforce this chapter or rules adopted by the board under this chapter at facilities or sources not required to obtain a Title IV or V operating permit under the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

(b) The board may adopt rules relating to charging and collecting a fee for an exemption from a [construction] permit authorized by board rule and for a variance.

(c) For purposes of the fees, the board shall treat two or more facilities that compose an integrated system or process as a single facility if a structure, device, item of equipment, or enclosure that constitutes or contains a given stationary source operates in conjunction with and is functionally integrated with one or more other similar structures, devices, items of equipment, or enclosures.

(d) A fee assessed under this section may not be less than \$25 [~~\$50~~] or more than \$75,000 [~~\$50,000~~].

(e) The board by rule shall establish the fees to be collected pursuant to Subsection (a) in amounts sufficient to recover:

(1) the reasonable costs to review and act on a variance application and enforce the terms and conditions of the variance; and

(2) not less than 50 percent of the board's actual annual expenditures to:

(A) review and act on permits or special permits;

(B) amend and review permits;

(C) inspect permitted, exempted, and specially permitted [~~and registered~~] facilities; and

(D) enforce the rules and orders adopted and permits, special permits, and exemptions issued under this chapter, excluding rules and orders adopted and permits required under Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

SECTION 19. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.0621 to read as follows:

Sec. 382.0621. OPERATING PERMIT FEE. (a) The board shall adopt, charge, and collect an annual fee based on emissions for each source that is either (i) subject to permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549); or (ii) based on plant operations and the rate of emissions at the time the fee is due, would be subject to the permitting requirements if the requirements were in effect on the date the fee is due.

(b) Fees imposed under this section shall be at least sufficient to cover all reasonably necessary direct and indirect costs of developing and administering the permit program under Titles IV and V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), including the reasonable costs of:

(1) reviewing and acting on any application for a Title IV or V permit;

(2) implementing and enforcing the terms and conditions of a Title IV or V permit, excluding any court costs or other costs associated with any enforcement action;

(3) emissions and ambient monitoring;

(4) preparing generally applicable regulations or guidance;

(5) modeling, analyses, and demonstrations; and

(6) preparing inventories and tracking emissions.

(c) The board by rule may provide for the automatic annual increase of fees imposed under this section by the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for the calendar year 1989. For purposes of this subsection:

(1) the consumer price index for any calendar year is the average of the Consumer Price Index for All Urban Consumers published by the United States Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year; and

(2) the revision of the consumer price index that is most consistent with the consumer price index for calendar year 1989 shall be used.

(d) The board may not impose a fee for any amount of emissions of an air contaminant in excess of 4,000 tons per year from any source.

(e) This section does not restrict the authority of the board under Section 382.062 to impose fees on sources not subject to the permitting requirements of

Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

(f) Fees collected by the board under Subsection (a) before the date of delegation of the state's permitting program under Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) shall be deposited to the credit of the air quality fee fund and shall be used to safeguard the air resources of the state.

SECTION 20. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.0622 to read as follows:

Sec. 382.0622. AIR QUALITY FEE FUND. (a) The air quality fee fund is a fund in the state treasury.

(b) The fund consists of:

(1) fees collected by the board under Sections 382.062, 382.0621, and 382.037 and as otherwise provided by law; and

(2) two dollars of each advance payment collected by the Department of Public Safety for inspection certificates for vehicles other than mopeds under Section 141(c), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(c) Fees collected under Section 382.0621 shall be deposited to the credit of a separate account in the fund.

(d) The interest income on the investment of money in the fund shall be deposited to the credit of the general revenue fund, except that the interest income on the account containing fees collected under Section 382.0621 shall be deposited to the credit of that account.

(e) The board may spend money in the fund to safeguard the air resources of the state, including payments to the Public Safety Commission for incidental costs incurred by it in administering the vehicle emissions inspection and maintenance program, except that after the date of delegation of the state's permitting program under Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549), fees collected under Section 382.0621(a) may be spent only to cover costs of developing and administering the federal permit program under Titles IV and V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

SECTION 21. Section 382.091, Health and Safety Code, is amended to read as follows:

Sec. 382.091. CRIMINAL OFFENSES [~~UNAUTHORIZED EMISSIONS PROHIBITED; CRIMINAL PENALTY~~]. (a) A person commits an offense if the person:

(1) intentionally or knowingly, with respect to his conduct, violates:

(A) Section 382.0515(a) (relating to preconstruction and modification permits);

(B) Section 382.054 (relating to obtaining federal operating permits);

(C) Section 382.056(a) (relating to publication of notice of intent to obtain permit or permit review);

(D) Section 382.058(a) (relating to compliance with notice and opportunity for hearing provisions of Section 382.056); or

(E) an order, permit, rule, or exemption issued under this chapter;

(2) intentionally or knowingly fails to pay a fee required by this chapter or by a rule adopted or order issued under this chapter;

(3) intentionally or knowingly makes or causes to be made any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or does not file or maintain any notice, application, record, report, plan, or other document required to be filed or



maintained by this chapter or by a rule adopted or permit or order issued under this chapter;

(4) intentionally or knowingly fails to notify or report to the board as required by this chapter or by a rule adopted or permit or order issued under this chapter;

(5) intentionally or knowingly tampers with, modifies, disables, or fails to use a required monitoring device; tampers with, modifies, or disables a monitoring device; or falsifies, fabricates, or omits data from a monitoring device, unless done in strict compliance with this chapter or a permit, rule, variance, or other order issued by the board;

(6) recklessly, with respect to the person's conduct, emits an air contaminant that places any other person in imminent danger of death or serious bodily injury unless the emission is made in strict compliance with this chapter or a permit, rule, variance, or other order issued by the board;

(7) intentionally or knowingly, with respect to the person's conduct, emits an air contaminant that places any other person in imminent danger of death or serious bodily injury unless the emission is made in strict compliance with this chapter or a permit, rule, variance, or other order issued by the board;

(8) intentionally or knowingly, with respect to the person's conduct, emits an air contaminant with the knowledge that the person is placing any other person in imminent danger of death or serious bodily injury unless the emission is made in strict compliance with this chapter or a permit, rule, variance, or other order issued by the board; or

(9) causes or permits the emission of an air contaminant in such concentration and of such duration that causes air pollution unless the emission is made in compliance with a variance or other order issued by the board.

(b) Each day a violation under this section occurs is a separate offense.

(c) In this section, "serious bodily injury" shall have the meaning assigned by Section 1.07, Penal Code [may not cause or permit the emission of an air contaminant that causes or that will cause air pollution unless the emission is made in compliance with a variance or other order issued by the board.

[(b) A person commits an offense if the person violates this section. An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$1,000:

[(c) Each day a violation occurs is a separate offense.

[(d) Venue for prosecution of an alleged violation is in the county in which the violation is alleged to have occurred.

[(e) In this section, "person" means an individual or a private corporation].

SECTION 22. Subchapter D, Chapter 382, Health and Safety Code, is amended by adding Sections 382.092 through 382.095 to read as follows:

Sec. 382.092. CRIMINAL PENALTIES. (a) An offense under Section 382.091(a)(1) is punishable for an individual by a fine of not more than \$50,000 nor less than \$1,000, confinement in jail not to exceed 180 days, or both fine and confinement and, for a corporation or association, by a fine of not more than \$100,000 nor less than \$1,000.

(b) An offense under Section 382.091(a)(2) is punishable for an individual by a fine up to twice the amount of the required fee, confinement in jail not to exceed 90 days, or both fine and confinement and, for a corporation or association, a fine of up to twice the amount of the required fee.

(c) An offense under Sections 382.091(a)(3)-(5) is punishable for an individual by a fine of not more than \$100,000 nor less than \$500, confinement in jail not to exceed one year, or both fine and confinement and, for a corporation or association, by a fine of not more than \$250,000 nor less than \$1,000.

(d) An offense under Section 382.091(a)(6) is punishable for an individual by a fine of not more than \$100,000 nor less than \$1,000, confinement in jail not to

exceed one year, or both fine and confinement and, for a corporation or association, by a fine of not more than \$250,000 nor less than \$2,500.

(e) An offense under Section 382.091(a)(7) is punishable for an individual by a fine of not more than \$150,000 nor less than \$1,500, confinement by the Texas Department of Criminal Justice not to exceed five years, or both fine and confinement and, for a corporation or association, by a fine of not more than \$300,000 nor less than \$3,000.

(f) An offense under Section 382.091(a)(8) is punishable for an individual by a fine of not more than \$250,000 nor less than \$2,500, confinement by the Texas Department of Criminal Justice not to exceed 10 years, or both fine and confinement and, for a corporation or association, by a fine of not more than \$500,000 nor less than \$5,000.

(g) An offense under Section 382.091 (a)(9) is punishable by a fine of not more than \$5,000 nor less than \$100.

(h) If it is shown at the trial of a defendant that the defendant has previously been convicted of an offense under this section, the maximum punishment may be doubled with respect to both the fine and imprisonment.

(i) In this section, "corporation" and "association" have the meanings assigned by Section 1.07, Penal Code, except that the terms do not include a government.

Sec. 382.093. PROOF OF KNOWLEDGE. In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for his actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, however, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

Sec. 382.094. AFFIRMATIVE DEFENSES. It is an affirmative defense to prosecution under this chapter that:

(1) the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession or medical treatment or medical or scientific experimentation conducted by professionally approved methods and the person endangered had been made aware of the risks involved before giving consent; or

(2) the person charged was an employee who was carrying out his normal activities and was acting under orders from his employer, except where the person charged engaged in knowing and wilful violations.

Sec. 382.095. ASSISTANCE IN PROSECUTION BY ATTORNEY GENERAL. (a) At the specific request of the board or the executive director, for criminal prosecution of an alleged violation, the attorney general may institute the procedures set forth in Subsection (b).

(b) The attorney general, after evaluating the case, may:

(1) notify the prosecuting attorney in the county in which the violation allegedly occurred; and

(2) offer the investigative, technical, and litigation assistance of the attorney general's office in any prosecution of the alleged violation brought by the prosecuting attorney.

(c) The attorney general may establish a section within the attorney general's office to provide the investigative, technical, and litigation assistance authorized by this section.

SECTION 23. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.096 to read as follows:

Sec. 382.096. PUBLIC PARTICIPATION. Before a consent order or settlement agreement settling a civil or administrative enforcement action under this chapter to which the State of Texas or board is a party is approved by the board or a judgment or other agreement settling a judicial enforcement action, other than an enforcement action under Section 113 or 120 or Title II of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), is signed by the court, the board or the attorney general, as appropriate, shall permit the public to comment in writing on the proposed order, judgment, or other agreement. Notice of the opportunity to comment shall be published in the Texas Register at least 30 days before the close of the period for comment by the public. The board or the attorney general, as appropriate, shall promptly consider any written comments and may withdraw or withhold consent to the proposed order, judgment, or other agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. No further notice of changes to the proposed order, judgment, or other agreement must be published if those changes arise from comments submitted in response to a previous notice. This section shall not apply to criminal enforcement proceedings.

SECTION 24. Subsections (b), (c), and (d), Section 382.019, Health and Safety Code, are amended to read as follows:

(b) ~~[A rule adopted under this section must be consistent with any federal law relating to the control of emissions from the vehicles covered:~~

~~[(c)] The board may not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification, or other approval of any feature or equipment designed to control emissions from motor vehicles if that feature or equipment has been certified, approved, or otherwise authorized under federal law.~~

~~[(d) The board or any other state agency may not adopt a rule requiring the use of Stage II vapor recovery systems that control motor vehicle refueling emissions at a gasoline dispensing facility in this state until the United States Environmental Protection Agency determines that the use of the system is required for compliance with the federal Clean Air Act (42 U.S.C. 7401 et seq.).]~~

SECTION 25. Section 382.037, Health and Safety Code, is amended to read as follows:

Sec. 382.037. ~~[MOTOR]~~ VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM ~~[FOR HARRIS COUNTY]~~. (a) The board by resolution may request the Public Safety Commission to establish a vehicle emissions inspection and maintenance program under Section 142, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), in accordance with this section and rules adopted under this section. The board shall have the authority to adopt rules to establish, implement, and administer a program that would require emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

(b) The board by rule may require emissions-related inspection and maintenance of land vehicles, including testing exhaust emissions, examining emission control devices and systems, verifying compliance with applicable standards, and other requirements as provided by federal law or regulation.

(c) If the program is established under this section, the board:

(1) shall adopt vehicle emissions inspection and maintenance requirements for certain areas as required by federal law or regulations; and

(2) may adopt vehicle emissions inspection and maintenance requirements for counties not subject to a specific federal requirement in response to a formal request by resolutions adopted by the county and the most populous

city within the county according to the most recent federal decennial census. A program initiated under this section shall not have registration-based enforcement unless the State Department of Highways and Public Transportation elects to include the program in its registration enforcement system.

(d) On the adoption of a resolution by the board and after proper notice thereof, the State Department of Highways and Public Transportation shall implement a system that would require, as a condition of registering a vehicle under Section 2, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-2, Vernon's Texas Civil Statutes), in a county that is included in a vehicle emissions inspection and maintenance program under Section 142, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), that the owner of the vehicle hold a valid vehicle emissions inspection certificate issued for the vehicle under that Act within the 12 months preceding the application for registration. The State Department of Highways and Public Transportation shall implement such a system when it is required by any provision of federal or state law, including any provision of the Texas air quality state implementation plan. The board, as provided herein, may require or accept verification of compliance other than a vehicle inspection certificate. Such alternative verification of compliance shall be in a form as determined through joint rule making by the board and the State Department of Highways and Public Transportation.

(e) The board may assess fees for vehicle emissions-related inspections performed at inspection or reinspection facilities authorized and licensed by the board, in amounts reasonably necessary to recover the costs of developing, administering, evaluating, and enforcing the vehicle emissions inspection and maintenance program. If the program relies on privately operated or contractor-operated inspection or reinspection stations, an appropriate portion of the fee as determined by board rule may be retained by the station owner or operator to recover the cost of performing the inspections and provide a reasonable margin of profit. Any portion of the fee retained by the Texas Air Control Board shall be deposited in the air quality fee fund established pursuant to Section 382.0622.

(f) The board shall examine the efficacy of annually inspecting diesel vehicles for compliance with applicable federal emissions standards, compliance with an opacity or other emissions-related standard established by board rule, or both and shall implement that inspection program if the board determines the program would minimize emissions.

(g) To the extent the state is not preempted by federal requirements, the board by rule may establish explicit standards for vehicle fuel content to provide for cleaner motor vehicle fuels, with the assistance and cooperation of the Department of Public Safety and the State Department of Highways and Public Transportation, shall develop a program of motor vehicle inspections and maintenance in Harris County.

~~[(b) The board shall cooperate with any legislative committee appointed to monitor the progress made in satisfying this section].~~

SECTION 26. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Sections 382.038 and 382.039 to read as follows:

Sec. 382.038. INSPECTION STATIONS; QUALITY CONTROL AUDITS. (a) The board by rule shall adopt standards and procedures for establishing vehicle emissions inspection stations authorized and licensed by the state.

(b) A vehicle emissions inspection may be performed at a decentralized independent inspection station or at a centralized inspection facility operated or licensed by the state. It is the intent of the legislature that in developing the program

for vehicle emissions inspections, the board shall make all reasonable efforts to preserve the present decentralized system.

(c) After consultation with the State Department of Highways and Public Transportation, the board shall require state and local transportation planning entities designated by the board to prepare long-term projections of the combined impact of significant planned transportation system changes on emissions and air quality. The projections shall be prepared using air pollution estimation methodologies established jointly by the board and the State Department of Highways and Public Transportation. Nothing in these provisions shall be interpreted to interfere with the State Department of Highways and Public Transportation's function as the transportation planning body for the state nor its role in identifying and initiating specific transportation-related projects in the state.

(d) The board may authorize enforcement personnel or other individuals to remove, disconnect, adjust, or make inoperable vehicle emissions control equipment, devices, or systems and to operate a vehicle in the tampered condition in order to perform a quality control audit of an inspection station or other quality control activities as necessary to assess and ensure the effectiveness of the vehicle emissions inspection and maintenance program.

(e) The board and the Department of Public Safety shall develop a challenge station program to ensure quality control of a vehicle emissions inspection and maintenance system.

Sec. 382.039. ATTAINMENT PROGRAM. (a) The board shall coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants from motor vehicles.

(b) Participating agencies include the State Department of Highways and Public Transportation and metropolitan planning organizations designated by the governor.

SECTION 27. Section 2, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-2, Vernon's Texas Civil Statutes), is amended by adding Subsection (i) to read as follows:

(i) In implementing each system which requires a valid vehicle emissions inspection certificate as a condition of registering a vehicle in a county that is included in a vehicle emissions inspection and maintenance program under Section 142, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), the State Department of Highways and Public Transportation through the county tax collector in the county may not issue a registration for a vehicle unless the vehicle emissions inspection certificate for that vehicle or other verification of compliance, as provided in Section 382.037(d), Health and Safety Code, is submitted with the application for registration or renewal of registration.

SECTION 28. Section 3, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-3, Vernon's Texas Civil Statutes), is amended by adding Subsection (j) to read as follows:

(j) In implementing each system which requires a valid vehicle emissions inspection certificate as a condition of registering a vehicle in a county that is included in a vehicle emissions inspection and maintenance program under Section 142, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), the State Department of Highways and Public Transportation shall require that the vehicle emissions inspection certificate for that vehicle or other verification of compliance, as provided in Section 382.037(d), Health and Safety Code, be submitted with an application for registration or renewal of registration.

SECTION 29. Section 140, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Subsection (b-1) and amending Subsection (c) to read as follows:

(b-1) Notwithstanding the provisions of Subsection (b) of this section, if an emissions-related inspection under Section 142(d) or (d-1) of this Act discloses the necessity for adjustments, corrections, or repairs, the Texas Air Control Board by rule may require that the vehicle be reinspected at a specified inspection station authorized and licensed by the Texas Air Control Board to ensure that the proper emissions-related adjustments, corrections, or repairs have been made.

(c) Official inspection stations appointed and supervised by the State of Texas shall make all inspections pursuant to the provisions of this Section, except as provided in subdivision (d) hereof. The Department shall cause one (1) inspection to be made in the year commencing with the effective date of this Act, and annually thereafter. If the motor vehicle, trailer, semi-trailer, pole trailer or mobile home, registered in this State, is damaged to the apparent extent that it would require repair before passing state inspection, the investigating officer shall remove the inspection certificate from the vehicle windshield and shall give the operator of the vehicle a dated receipt. Within thirty (30) days of the date indicated on the receipt, the vehicle shall be reinspected. The periods of inspection shall be fixed by the Department, provided, however, that at no time, except as provided in Section 142A of this Act or as may be provided under Section 382.037, Health and Safety Code, shall a certificate of inspection or receipt for a certificate of inspection be required or demanded as a condition precedent to securing a license plate for any motor vehicle, regardless of any period or periods of inspection as may be fixed by the Department. The Department shall have power to make rules and regulations, not inconsistent with law, with respect to the periods of inspection. This subsection does not affect the authority of the Texas Air Control Board under Section 382.037, Health and Safety Code, to require a valid vehicle emissions inspection certificate as a condition of registering a vehicle under Section 2, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-2, Vernon's Texas Civil Statutes).

SECTION 30. Section 141, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Subsection (a-1), amending Subsection (c), and deleting Subsection (c-1) to read as follows:

(a-1) The Texas Air Control Board may authorize and license inspection stations as necessary to conduct the emissions-related reinspection requirements of the vehicle emissions inspection and maintenance program under Sections 142(d) and (d-1) of this Act. At the request of the Texas Air Control Board, the Department shall provide inspection certificates for distribution and issuance at centralized reinspection stations licensed by the Texas Air Control Board. The Texas Air Control Board shall pay to the Department an amount equal to the cost of producing the certificates. The Texas Air Control Board shall establish a reinspection fee and shall implement procedures governing tracking of certificates and refunding the cost of unused certificates issued to reinspection facilities.

(c) The fee for compulsory inspection of a motor vehicle other than a moped, to be made under this Section, shall be Ten [Eight] Dollars and Fifty Cents (\$10.50) [(\$8.50)]. The fee for compulsory inspection of a moped, to be made under this Section, shall be Five Dollars and Seventy-five Cents (\$5.75). Five [Three] Dollars and Fifty Cents (\$5.50) [(\$3.50)] of each fee shall be paid to the Department and shall, except as provided by Section 815.405, Government Code, or Section 382.0622, Health and Safety Code [25.405, Title 110B, Revised Statutes], be placed in the Motor Vehicle Inspection Fund for the purpose of paying the expense of the administration of this law. The Department may require each official inspection station to make an advance payment of Five [Three] Dollars and Fifty Cents (\$5.50) [(\$3.50)] for each inspection certificate furnished to it, and the money so received shall, except as provided by Section 815.405, Government Code [25.405, Title 110B, Revised Statutes], be placed in the Motor Vehicle Inspection Fund, and no

further payment to the Department shall be required upon issuance of the certificate. If such advance payment has been made, the Department shall refund to the inspection station the amount of Five [Three] Dollars and Fifty Cents (\$5.50) [(\$3.50)] for each unissued certificate which the inspection station returns to the Department in accordance with rules and regulations promulgated by the Department. The Texas Air Control Board shall refund to the Department Two Dollars (\$2.00) for each unused certificate returned to the Department by inspection stations licensed by the Department. An inspection station may waive the fee otherwise due from the owner of a vehicle inspected under this Section if the inspection station has rendered in advance to the Department the payment of Five [Three] Dollars and Fifty Cents (\$5.50) [(\$3.50)] for the certificate applied to a vehicle with respect to which the owner's fee has been so waived.

~~[(c-1) Notwithstanding the provisions of Subsection (c) of Section 140 of this Act and Subsection (c) of this section, a passenger car or light truck that is sold in this state, has not been previously registered in this or another state, and on the date of sale is of the current or the immediately preceding model year is subject to an initial inspection that expires at the end of two years. The fee for compulsory inspection under this subsection is Fifteen Dollars and Seventy-five Cents (\$15.75). The Department shall require each official inspection station to make an advance payment of Ten Dollars and Seventy-five Cents (\$10.75) for a certificate to be issued under this subsection, and the money so received shall, except as provided by Section 25.405, Title 110B, Revised Statutes, be placed in the Motor Vehicle Inspection Fund. No further payment may be required of a station for a certificate under this subsection. Refunds for unissued certificates shall be made in the same manner as provided for other certificate refunds. This subsection does not preclude motor vehicle emission inspections from being conducted during an initial certification period under this subsection in counties covered by a federal Environmental Protection Agency-approved inspection and maintenance program pursuant to Subsection (d) of Section 142 of this Act and the federal Clean Air Act (42 U.S.C. Section 7401 et seq.). An inspection station may waive the fee otherwise due from the owner of a vehicle inspected under this Subsection.]~~

SECTION 31. Section 142, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by amending Subsections (d), (e), and (h), and adding Subsection (d-1) to read as follows:

(d) The Public Safety Commission shall establish a [parameter] motor vehicle emissions inspection and maintenance program for vehicles registered in any county in this state [which does not meet National Ambient Air Quality Standards and] for which the Texas Air Control Board has adopted a resolution requesting the department to institute such a program and which satisfies one of the following conditions:

- (1) the county does not meet the national ambient air quality standards for ozone, carbon monoxide, or another vehicle-related pollutant; or
- (2) the vehicle emissions inspection and maintenance program is required by any provision of federal law, including any provision of the Texas air quality state implementation plan.

(d-1) The Public Safety Commission may establish a motor vehicle emissions inspection and maintenance program for vehicles registered in any county in this state for which the Texas Air Control Board has adopted a resolution requesting the Department to institute such a program and for which the affected county and the most populous city in the county, according to the most recent federal decennial census, by resolution have formally requested a proactive air quality plan consisting of a vehicle emissions inspection and maintenance program. A program initiated under this subsection shall not have registration-based enforcement unless the State Department of Highways and Public Transportation elects to include the program

in its registration enforcement system ~~[The commission may establish a parameter or any other motor vehicle emissions inspection and maintenance program for any area in the state as required under federal law].~~

(e) The Public Safety Commission shall adopt standards for emissions-related inspection criteria consistent with Texas Air Control Board and federal requirements applicable to a county in which such a program, pursuant to Subsections [Subsection] (d) and (d-1) of this section, is established.

(h) A motor vehicle emissions inspection and maintenance program instituted under this Act shall be terminated upon receipt of a request consisting of a resolution adopted by the Texas Air Control Board ~~[discontinuation of federal requirements for such action].~~

SECTION 32. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.040 to read as follows:

Sec. 382.040. POLLUTION PREVENTION. (a) The board by rule shall establish a comprehensive pollution prevention and reduction program designed to reduce emissions of hazardous air contaminants which is not inconsistent with Title III of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

(b) The rules adopted by the board shall:

(1) include a specific list of hazardous air contaminants to be addressed by the program;

(2) require owners or operators of facilities that emit significant quantities of one or more hazardous air contaminants to establish a schedule for achieving emission reduction goals for those contaminants, to prepare a plan documenting the schedule and the emission reduction goals, and to submit annual reports assessing progress toward those goals;

(3) require that the hazardous air contaminants emission reduction plans be prepared in conjunction with any waste reduction plans required by the Texas Water Commission; and

(4) require that the plans identify cases where pollution prevention goals designed to minimize risk to human health will result in an increased emission of a different air contaminant or an increased emission to a different environmental medium.

(c) The board shall consult with the Texas Water Commission and with other appropriate state agencies in developing requirements that will effectively implement Subsection (b) and also provide a consistent framework for developing pollution prevention plans for multiple environmental media. The board and the Texas Water Commission may establish priorities for reduction or minimization of particular substances in order to reduce the risk to the public health or the environment.

SECTION 33. Subsection (e), Section 382.017, Health and Safety Code, as amended by S.B. No. 404, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(e) Except as provided by Sections 382.0171-382.021 or to comply with federal law or regulations, the board by rule may not specify:

(1) a particular method to be used to control or abate air pollution;  
(2) the type, design, or method of installation of equipment to be used to control or abate air pollution; or

(3) the type, design, method of installation, or type of construction of a manufacturing process or other kind of equipment.

SECTION 34. Sections 382.0541, 382.0542, and 382.0561 through 382.0563, Health and Safety Code, as added by this article, and the federal operating permit requirement described by Section 382.054, Health and Safety Code, as amended by this article, take effect on the date on which the executive director of the Texas Air Control Board publishes in the Texas Register notice of approval of



the state's permitting program under Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) by the administrator of the United States Environmental Protection Agency.

SECTION 35. (a) A person who holds a construction permit under Section 382.051, Health and Safety Code, as it existed before the effective date of this article, and whose application for an operating permit under Section 382.054, Health and Safety Code, as it existed before the effective date of this article, is pending on September 1, 1991, may operate the facility or source for which the permit was issued as provided by Section 382.0511, Health and Safety Code, as added by this article, subject to the permitting and review and renewal requirements of Sections 382.054 and 382.055, Health and Safety Code, as amended by this article.

(b) Any person required to obtain a federal operating permit under Section 382.054, Health and Safety Code, as amended by this article, who has commenced construction on and/or operated such facility or source pursuant to a permit, special permit, exemption or other authorization issued or applicable pursuant to Section 382.051, 382.054, 382.055, or 382.057, Health and Safety Code, as they existed before the effective date of this article, or under Sections 382.0511 and 382.0515, Health and Safety Code, as added by this article, and any regulations issued under such sections, may continue constructing and/or operating the facility or source for which the federal operating permit is required under such permit, special permit, exemption, or other authorization, subject to any applicable permit review and renewal requirement of Section 382.055, Health and Safety Code, as amended by this article, during the time between the date on which the permit requirement of Section 382.054, Health and Safety Code, as amended by this article, takes effect and the date on which the person obtains the required federal operating permit if the person timely files an application for a federal operating permit.

(c) An application for a federal operating permit required by Section 382.054, Health and Safety Code, as amended by this article, must be submitted to the Texas Air Control Board not later than the latter of:

(1) one year after the date on which the executive director of the Texas Air Control Board publishes in the Texas Register notice of approval of the state's permitting program under Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) by the administrator of the United States Environmental Protection Agency; or

(2) one year after the date on which the facility or source for which a permit is required becomes subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

SECTION 36. Not later than November 15, 1992, the Texas Air Control Board shall submit to the administrator of the United States Environmental Protection Agency the board's plan for a small business stationary source technical and environmental compliance assistance program as required by Section 507 of Title V of the federal Clean Air Act Amendments of 1990 (Pub. L. No. 101-549).

SECTION 37. Not later than January 1, 1992, the Texas Air Control Board shall adopt rules necessary to collect and administer the fees imposed under Section 382.0621, Health and Safety Code, as added by this article.

SECTION 38. (a) The change in law made by this article applies only to an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 39. In addition to the substantive changes made by this article, this article conforms Section 382.003, Health and Safety Code, to Section 1,

Chapter 1190, Acts of the 71st Legislature, Regular Session, 1989, and Section 382.019, Health and Safety Code, to Section 2, Chapter 1190, Acts of the 71st Legislature, Regular Session, 1989.

SECTION 40. Except as provided by Section 31 of this article, this article takes effect September 1, 1991.

The amendment to Floor Amendment No. 1 was read.

Senator Green offered the following amendment to Floor Amendment No. 6:

**Floor Amendment No. 7**

Amend Floor Amendment No. 6 to C.S.S.B. 35, Article II, SECTION 7, Section 382.0515, by deleting Subsection (g) (page 14 lines 24-29) and substitute in lieu thereof the following:

"(g) Subsections (a)-(d) do not apply to a person who has executed a contract or has begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971, provided that person registered with the board as required by Section 382.060, unless that facility is in a nonattainment area as defined in Title I of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.). To qualify for any exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972. This subsection expires January 1, 2001."

The amendment to Floor Amendment No. 6 was read and was adopted by a viva voce vote.

Senator Carriker offered the following amendment to Floor Amendment No. 6:

**Floor Amendment No. 8**

Amend Floor Amendment No. 6 to C.S.S.B. 35, by amending Section 25, paragraph (f) to read as follows:

"(f) The board shall examine the efficacy of annually inspecting diesel vehicles for compliance with applicable federal emission standards, compliance with an opacity or other emissions-related standard established by board rule, or both, and shall implement that inspection program if the board determines the program would minimize emissions. For purposes of this paragraph, a diesel engine not used in a vehicle registered for use on public highways is not a "diesel vehicle".

The amendment to Floor Amendment No. 6 was read and was adopted by a viva voce vote.

Senator Green offered the following amendment to Floor Amendment No. 6:

**Floor Amendment No. 9**

Amend Floor Amendment No. 6 to C.S.S.B. 35, Article II, as follows:

(1) In SECTION 21, Section 382.091, add Subsection (d) (page 34, line 30) to read as follows:

"(d) In this section, "intentionally," "knowingly," and "recklessly" have the meanings assigned by Section 6.03, Penal Code."

(2) In SECTION 22, delete Section 382.093 (page 36, lines 26 through 30 and page 37, lines 1 through 4) and substitute in lieu thereof the following:

"Sec. 382.093. PROOF OF KNOWLEDGE. For the purposes of Section 382.091(a)(8), in determining whether a defendant who is an individual knew that

the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, however, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information."

The amendment to Floor Amendment No. 6 was read.

On motion of Senator Green and by unanimous consent Floor Amendment No. 9 was withdrawn.

Senator Whitmire offered the following amendment to Floor Amendment No. 6:

**Floor Amendment No. 10**

Amend Floor Amendment No. 6 to C.S.S.B. 35 as follows:

(1) On page 52, after SECTION 33 add a new SECTION 34 to read as follows:

Section 361.003 of the Health and Safety Code is amended by adding new subsections (5) and (26) as follows:

(5) "Commercial incinerator" means a facility that accepts for incineration waste generated outside the property boundaries of the facility other than the waste generated from off-site health care related facilities owned or operated by a related person.

(26) "Related person" means a person that is affiliated by being either a parent or wholly owned subsidiary of the person that is the owner of the incinerator.

Renumber existing subsections accordingly.

(2) Renumber the subsequent Sections of C.S.S.B. 35.

The amendment to Floor Amendment No. 6 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 6 as amended, the amendment as amended was adopted by the following vote: Yeas 29, Nays 1.

Nays: Harris of Dallas.

Absent-excused: Lyon.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

**RECORD OF VOTE**

Senator Harris of Dallas asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**COMMITTEE SUBSTITUTE  
SENATE BILL 35 ON THIRD READING**

Senator Parker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.S.B. 35 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Henderson, Johnson, Krier, Leedom, Lucio, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Harris of Dallas, Sims.

Absent-excused: Lyon.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Johnson, Krier, Leedom, Lucio, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Harris of Dallas, Henderson, Sims.

Absent-excused: Lyon.

#### MESSAGE FROM THE HOUSE

House Chamber  
April 25, 1991

HONORABLE BOB BULLOCK  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**H.B. 633**, Relating to the composition of the governing board of the Texas Department of Commerce.

**H.B. 734**, Relating to the operation and functions of certain mass transit authorities.

**H.B. 1066**, Relating to the participation of certain inmates of the institutional division of the Texas Department of Criminal Justice in education programs and inmate tutor programs, and the effect of that participation on eligibility for release on parole.

**H.B. 2553**, Relating to the services and businesses eligible to hold an agricultural permit for transportation of agricultural commodities.

Respectfully submitted,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### MEMORIAL RESOLUTION

**S.R. 608** - By Montford: In memory of William S. Magness of Austin.

#### WELCOME AND CONGRATULATORY RESOLUTIONS

**H.C.R. 186** - (Dickson): Honoring Fort Hood and all of its personnel for their important role in Operation Desert Shield and Operation Desert Storm.

**H.C.R. 208** - (Krier): Commemorating Fiesta on the momentous occasion of its centennial celebration and commending all persons who have worked so hard to ensure the continuing success of this well-loved event.

**S.R. 593** - By Whitmire: Recognizing Vernon Dean Munson for his 36 years of loyal service with Shell Oil Company.

**S.R. 594** - By Whitmire: Recognizing E. E. Rogers of Pasadena on the momentous occasion of his retirement on April 1, 1991, after 39 years of dedicated service with Shell Oil Company.

**S.R. 595** - By Whitmire: Recognizing C. O. Patterson, who recently retired after 38 years of dedicated service with Shell Oil Company.

**S.R. 596** - By Barrientos: Recognizing John Nira for his dedication and exceptional contributions to the Contrafraternity of Christian Doctrine program at San Jose Catholic Church in Austin.

**S.R. 597** - By Barrientos: Recognizing Anna Singleton of Austin for her exemplary leadership at San Jose Catholic Church.

**S.R. 598** - By Green: Recognizing the Kosciuszko Polish Lodge on the grand occasion of its 100th anniversary.

**S.R. 600** - By Barrientos: Recognizing Vanessa Rochelle Merida, who will receive the Zeta's Minority Youth Award in a ceremony to be held on April 28, 1991, at Wesley United Methodist Church.

**S.R. 601** - By Barrientos: Recognizing Rhondolyn Celeste Harris, who will receive the Zeta's Minority Youth Award in a ceremony to be held on April 28, 1991, at Wesley United Methodist Church.

**S.R. 602** - By Barrientos: Recognizing Edana Elizabeth Walker, who will receive the Zeta's Minority Youth Award in a ceremony to be held on April 28, 1991, at Wesley United Methodist Church.

**S.R. 603** - By Barrientos: Welcoming the students of the High School Equivalency Program of Southwest Texas State University on their visit to the Capitol, May 9, 1991.

**S.R. 604** - By Barrientos: Recognizing Marcus J. Johnson, who will receive the Zeta's Minority Youth Award in a ceremony to be held on April 28, 1991, at Wesley United Methodist Church.

**S.R. 605** - By Barrientos: Recognizing James P. Rogers, who will receive the Zeta's Minority Youth Award in a ceremony to be held on April 28, 1991, at Wesley United Methodist Church.

**S.R. 606** - By Barrientos: Welcoming participants in Project Overview, honorable guests from the Czech and Slovak Federal Republic, to the capital of the State of Texas on May 1, 1991.

**S.R. 607** - By Barrientos: Paying tribute to John L. Burgess on the occasion of his retirement from 27 years of distinguished public service with the Office of the Consumer Credit Commissioner.

**S.R. 609** - By Montford: Joining with the family and many friends of Fannie Teague as they joyously celebrate her 100th birthday.

#### RECESS

On motion of Senator Brooks, the Senate at 4:58 p.m. took recess until 8:00 a.m. tomorrow.